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10	Attorneys for Defendants BENIHANA NATIONAL CORP. and BENIHANA INC.		
11	BENIHANA INC.		
12	UNITED STATES DISTRICT COURT		
13	NORTHERN DISTRICT OF CALIFORNIA		
14			
15	SALVADOR ROSALES, on behalf of	(State Court Case No. CGC-20-582696)	
16	himself, on behalf of others similarly situated and the general public,	DEFENDANTS' NOTICE OF REMOVAL	
17	Plaintiff,	PURSUANT TO 28 U.S.C. § 1332(d)(2) (CAFA)	
18	vs.		
19	BENIHANA NATIONAL CORP.,		
20	BENIHANA, INC. and DOES 1 through 10, inclusive,		
21	Defendants.		
22			
23	TO THE CLERK OF THE ABOVE-ENTI	TLED COURT:	
24	PLEASE TAKE NOTICE that Defendants Benihana National Corp. and Benihana Inc		
25	(collectively, "Defendants") hereby remove the	ne above-captioned action from the Superior Court of the	
26	State of California for the City and County of San Francisco (the "State Court") to the United States		
27	District Court for the Northern District of California. The basis for original jurisdiction of the federa		

DEFENDANTS' NOTICE OF REMOVAL

court is grounded in the Class Action Fairness Act of 2005 ("CAFA") and pursuant to 28 U.S.C. §§

Notice of Removal, Defendants state as follows:

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STATEMENT OF JURISDICTION

1332(d)(2), 1441(a) and 1446. As set forth below, this action meets each of the requirements for

removal and is timely and properly removed by the filing of this Notice of Removal. In support of this

- 1. This Court has original jurisdiction over this action under CAFA. *See* 28 U.S.C. § 1332(d)(2). CAFA grants district courts original jurisdiction over civil class actions filed under federal or state law in which any member of a class of plaintiffs is a citizen of a state different from any defendant and where the amount placed in controversy for the putative class members, in the aggregate, exceeds the sum or value of \$5,000,000, exclusive of interest and costs. CAFA authorizes removal of such actions in accordance with 28 U.S.C. § 1446.
- 2. This Court has jurisdiction over this case under CAFA, 28 U.S.C. § 1332(d)(2), and this case may be removed pursuant to the provisions of 28 U.S.C. § 1441 (a), in that it is a civil action wherein: (1) the proposed class contains at least 100 members; (2) Defendants are not a state, state official, or other governmental entity; (3) there is diversity between at least one class member and Defendants; and (4) the amount in controversy for all class members exceeds \$5,000,000.
- 3. As set forth below, this case meets all of CAFA's requirements for removal and is timely and properly removed by the filing of this Notice of Removal.

PLEADINGS, PROCESS, AND ORDERS

- 4. On February 4, 2020, Plaintiff Salvador Rosales commenced this action by filing a Class Action Complaint ("Complaint") in the Superior Court of California, City and County of San Francisco, entitled *Salvador Rosales, on behalf of himself, on behalf of others similarly situated and the general public v. Benihana National Corp., Benihana, Inc., and Does 1-10*, designated as Case No. CGC-20-582696 (the "State Court Action").
- 5. Plaintiff's Complaint in the State Court Action asserts the following causes of action:
 (1) Unpaid Overtime Compensation in Violation of IWC Wage Order No. 5 and Cal. Labor Code §§
 500, 510, and 1194; (2) Unpaid Minimum Wages in Violation of IWC Wage Order No. 5 and Cal. Labor Code §§ 1194 and 1194.2; (3) Failure to Provide Compliant Rest Periods in Violation of IWC Wage Order No. 5 and Cal. Labor Code § 226.7(a); (4) Failure to Provide Accurate/Itemized Wage DEFENDANTS' NOTICE OF REMOVAL

 2. CASE NO.

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Statements in Violation of Cal. Labor Code § 226; (5) Waiting Time Penalties Pursuant to Cal. Labor Code §§ 201-203; (6) Civil Penalties Pursuant to California's Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code § 2698, et seq.; and (7) Unfair Competition in Violation of Cal. Business & Professions Code § 17200, et seq. A true and correct copy of the Complaint is attached to this Notice of Removal as **Exhibit A** (hereafter "Complaint").

- 6. For these causes of action, Plaintiff seeks damages for unpaid regular and overtime wages, liquidated damages, prejudgment interest, and attorneys' fees and costs. (Complaint, Prayer for Relief, pp. 17-18.)
- 7. On May 13, 2020, Plaintiff served Defendants with a copy of the Summons, Complaint, Civil Case Cover Sheet, Notice of Case Management Conference, and Alternative Dispute Resolution Information Package. On May 21, 2020, Plaintiff filed proofs of service of the summons on Defendants in the State Court Action. True and correct copies of these documents are attached to this Notice of Removal as **Exhibit B**.
- 8. On June 11, 2020, Defendants filed an Answer to the Complaint in the Superior Court of the State of California, City and County of San Francisco. A true and correct copy of the Answer is attached to this Notice of Removal as Exhibit C.
- Pursuant to 28 U.S.C. § 1446(a), these documents collectively constitute "all process, 9. pleadings and orders" that have been served upon Defendants and filed in the State Court Action. To Defendants' knowledge, no further process, pleadings, or orders related to this case have been filed in the State Court Action or served by any party, and no proceedings related hereto have been heard in the State Court Action. Exhibits A, B, and C referenced above and attached hereto satisfy the requirements of 28 U.S.C. § 1446.

TIMELINESS OF REMOVAL

10. Pursuant to 28 U.S.C. § 1446(b) and Rule 6(a)(1)(C) of the Federal Rules of Civil Procedure, a notice of removal of a civil action must be filed within thirty (30) days of receipt of service of the summons and complaint if the complaint demonstrates that the case is removable. Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 347-48, 354 (1999) (removal period is triggered by completed state service of process).

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11. Removal of this action is timely because this Notice of Removal is filed within thirty (30) days from May 13, 2020, when Defendants were served with the Summons and Complaint. 28 U.S.C. § 1446(b). (*See* Exhibit B.)

VENUE

- 12. Plaintiff filed the Complaint in the Superior Court for the City and County of San Francisco, California. (*See generally* Complaint.) Venue properly lies in the United States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 84, 1391, 1441, and 1446.
- This is the District Court of the United States for the district embracing the place where the State Court Action is pending and is therefore the appropriate court for removal pursuant to 28 U.S.C. § 1441(a). *See also* 28 U.S.C. § 84 (relating to the four judicial districts of California and location of City and County of San Francisco in the Northern District).

CAFA REQUIREMENTS

14. As noted above CAFA grants federal district courts original jurisdiction over civil class action lawsuits filed under federal or state law in which any member of a class of plaintiffs is a citizen of a state different from any defendant, and where the amount in controversy exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). CAFA authorizes removal of such actions in accordance with 28 U.S.C. § 1446. As detailed below, this case meets each CAFA requirement for removal, and is timely and properly removed by the filing of this Notice.

Plaintiff's Complaint Seeks Relief as a Class Action

- 15. Under CAFA, "class action" means any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by one or more representative persons as a class action. 28 U.S.C. § 1332(d)(1)(B).
- 16. Plaintiff's Complaint asserts that he is seeking to pursue a class action on behalf of himself and others similarly situated. (Complaint, ¶¶ 2, 5, 8, 13, 16, 19, 27, 32-46, Prayer for Relief, pp 17-18.)

The Proposed Class Contains at Least 100 Members

17. Pursuant to 28 U.S.C. § 1332(d)(5)(B), district courts have original jurisdiction over a class action case under CAFA if the number of members of the proposed class is no less than 100. *See* DEFENDANTS' NOTICE OF REMOVAL 4. CASE NO.

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28 U.S.C. § 1332(d)(5)(B).

18. As set forth in the Complaint at paragraph 32, Plaintiff seeks to represent a class consisting of current and former restaurant workers defined as follows:

All current and former hourly or non-exempt employee's [sic] of DEFENDANTS who worked in the State of California at any time from four years from the date of the filing of this action through the entry of final judgment in this action.

19. Approximately 2,736 hourly or non-exempt employees worked for Defendant Benihana National Corp. in California¹ from February 4, 2016 to June 3, 2020 (hereafter for removal purposes only, "Putative Class"), when the most recent data was pulled for this analysis. (*See* Declaration of Nicole Thaung in Support of Defendants' Notice of Removal (hereafter, "Thaung Decl."), ¶ 4, filed concurrently herewith.) *Without conceding the scope of the Putative Class*, the Putative Class contains more than 100 members as pleaded.

Defendants Are Not Governmental Entities

- 20. CAFA does not apply to class actions where "primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief." 28 U.S.C. § 1332(d)(5)(B).
- 21. As Plaintiff concedes, Defendants are incorporated in the State of Delaware. (Complaint at ¶¶ 11-12; see also Declaration of Sharon Rose in Support of Defendants' Notice of Removal ("Rose Decl."), ¶¶ 2-3 filed concurrently herewith.)) Neither Defendant is a state, state official, or other government entity.

Plaintiff's Citizenship Is Diverse from Defendants' Citizenship

CAFA's minimal diversity requirement is satisfied, *inter alia*, when "any member of a class of Plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. §§ 1332(d)(2)(A); 1453(b). In a class action, only the citizenship of the named parties is considered for diversity purposes and not the citizenship of the class members. *Snyder v. Harris*, 394 U.S. 332, 339-40 (1969).

¹ Defendant Benihana, Inc. has no employees in California or elsewhere.

- 23. For diversity purposes, a person is a "citizen" of the state in which he or she is domiciled. See Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1090 (9th Cir. 1983). A person's domicile is the place he or she resides with the intention to remain, or to which he or she intends to return. See Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001). Allegations of residency in a state court complaint can create a rebuttable presumption of domicile supporting diversity of citizenship. See Lew v. Moss, 797 F.2d 747, 751 (9th Cir. 1986); see also Smith v. Simmons, 2008 U.S. Dist. LEXIS 21162, *22 (E.D. Cal. 2008) (place of residence provides "prima facie" case of domicile).
- 24. Here, Plaintiff Salvador Rosales fails to set forth allegations regarding citizenship. (See generally Complaint.) However, Defendant Benihana National Corp.'s records indicate that Plaintiff Salvador Rosales resided in the City and County of San Francisco, California. (See Declaration of Nicole Thaung in Support of Defendants' Notice of Removal (hereafter, "Thaung Decl."), ¶ 3, filed concurrently herewith.)
- 25. In addition, Plaintiff alleges that under California's Private Attorneys General Act of 2004 ("PAGA") a "private citizen" can pursue civil penalties on behalf of the State of California's Labor and Workforce Development Agency ("LWDA"), pursuant to Labor Code section 2698, et seq. (Complaint, ¶¶ 4, 74-82.) The Complaint contains a cause of action for civil penalties under the PAGA. (Id.) With these assertions, Plaintiff effectively alleges that he is a "private citizen" of the State of California.
- 26. With regard to Defendants' citizenship, under 28 U.S.C. section 1332, a corporation is deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business. See 28 U.S.C. § 1332(c)(1). As explained by the United States Supreme Court, "the phrase 'principal place of business' in § 1332(c)(1) refers to the place where a corporation's high level officers direct, control, and coordinate the corporation's activities . . . We believe that the 'nerve center,' will typically be found at a corporation's headquarters." Hertz Corp. v. Friend, 559 U.S. 77, 77 (2010).
- 27. Plaintiff's Complaint asserts that Defendants are Delaware corporations. (Complaint, ¶¶ 11-12.) At the time the action was commenced, Defendants were, and still are, incorporated under the laws of the State of Delaware and are therefore citizens of the State of Delaware. (Rose Decl., ¶¶ DEFENDANTS' NOTICE OF REMOVAL

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2-3 filed concurrently herewith.) At the time the action was commenced, Defendants' principal place of business was, and remains, in Aventura, Florida. Thus, Defendants are citizens of the State of Florida. (*Id.*) Neither is a citizen of California.

- The Complaint also names "Does 1 through 10," which are wholly fictitious 28. defendants. The Complaint does not set forth the identity or status of any fictitious defendants. (Complaint, ¶ 14.) Thus, pursuant to 28 U.S.C. section 1441(a), the citizenship of defendants sued under fictitious names must be disregarded for purposes of determining diversity jurisdiction and cannot destroy the diversity of citizenship between the parties in this action. See Newcombe v. Adolf Coors Co., 157 F.3d 686, 690-91 (9th Cir. 1998).
- 29. This action satisfies diversity requirements because Plaintiff is a citizen of the State of California and Defendants are citizens of Delaware and Florida. Therefore, the minimal diversity requirement of 28 U.S.C. section 1332(d)(2)(A) is satisfied.

The Amount Placed in Controversy Exceeds the Jurisdictional Threshold

- 30. This Court has jurisdiction under CAFA, which authorizes the removal of class actions in which, among the other factors mentioned above, the matter in controversy exceeds the jurisdictional threshold. 28 U.S.C. § 1332(d)(2). "The claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds" this amount. 28 U.S.C. § 1332(d)(6).
- 31. The removal statute requires that a defendant seeking to remove a case to federal court must file a notice "containing a short and plain statement of the grounds for removal." 28 U.S.C. § 1446(a). "[A]s specified in §1446(a), a defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." Dart Cherokee Basin Operating Co., LLC v. Owens, 135 S. Ct. 547, 554 (2014). Only if the plaintiff contests or the court questions the allegations of the notice of removal is supporting evidence required. Id. Otherwise, "the defendant's amount-in-controversy allegation should be accepted" just as a plaintiff's amount-incontroversy allegation is accepted when a plaintiff invokes federal court jurisdiction. *Id.* at 553.

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available business records, however, Defendants can run calculations to estimate the amount placed in controversy based on the claims alleged in Plaintiff's Complaint. 33. Defendants deny the allegations in the Complaint, yet are still entitled to show that the

Here, Plaintiffs do not allege the amount placed in controversy in the Complaint. Using

- amount placed in controversy exceeds the CAFA jurisdictional minimum. "Even when defendants have persuaded a court upon a CAFA removal that the amount in controversy exceeds \$5 million, they are still free to challenge the actual amount of damages in subsequent proceedings and at trial. This is so because they are not stipulating to damages suffered, but only estimating the damages that are in controversy." Ibarra v. Manheim Investments, Inc., 775 F.3d 1193, 1200, n1. (9th Cir. 2015) (citing Sparta Surgical Corp. v. Nat'l Ass'n of Sec. Dealers, Inc., 159 F.3d 1209, 1213 (9th Cir.1998) (holding that jurisdiction must be analyzed on the basis of pleadings filed at the time of removal and damages may change as a result of post-removal events)).
- 34. Here, Defendants deny the validity and merit of the entirety of Plaintiff's alleged claims, the legal theories upon which they are ostensibly based, and the alleged claims for monetary and other relief that flow therefrom. For purposes of removal only, however, and without conceding that Plaintiffs as members of any Putative Class or alleged aggrieved employees are entitled to any damages or penalties whatsoever, it is readily apparent that the aggregated claims of the Putative Class establish, by a preponderance of evidence, that the amount placed in controversy well exceeds the jurisdictional minimum for CAFA.
- 35. The Complaint asserts a cause of action for a violation of the California Unfair Competition Law ("UCL"), Business and Professions Code § 17200, et seq. (Complaint, ¶¶ 83-94.) Alleging a UCL violation may extend the statute of limitations for certain claims brought by Plaintiffs and the Putative Class from three to four years before the filing of the Complaint. In this case, the statute of limitations on certain claims extends to February 4, 2016. See Cal. Bus. & Prof. Code § 17208; Cortez v. Purolater Air Filtration Products Co., 23 Cal. 4th 163, 178-79 (2000) (four-year statute of limitations for restitution of wages under the UCL).
- 36. During all relevant time periods, Defendant Benihana National Corp. paid Plaintiffs and all other members of the Putative Class on a bi-weekly basis. (Thuang Decl., ¶ 2.)

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- 37. As a non-exempt hourly employee, Plaintiff Salvador Rosales' rate of pay at the time of termination was \$16.00 per hour. (Thuang Decl., ¶ 3.)
- 38. From February 4, 2016 to June 3, 2020 (when the most recent data was pulled for this analysis), approximately 2,736 non-exempt, hourly employees worked for Defendant Benihana National Corp. in the State of California ("Putative Class"). (Thuang Decl., ¶ 4.) The Putative Class members worked 507,314 shifts in 127,747 workweeks given their respective hire and termination dates according to Defendant Benihana National Corp.'s business records. (*Id.*) The average hourly rate earned by the Putative that Plaintiff seeks to represent during this timeframe is \$12.65. (*Id.*)
- The claim for **unpaid minimum wages** involves approximately 2,736 members of the Putative Class, with 507,314 workweeks in controversy from February 4, 2016 to the present. (Thuang Decl., ¶¶ 4-5.) In the Complaint Plaintiff alleges that he worked 5-6 days per week and regularly worked shifts that ranged from 5.5 to 8 hours per day. (Complaint, ¶ 21-22.) Plaintiff alleges that he and members of the Putative Class spent ten minutes "off the clock" both before and after each shift to change into their "uniforms." (Complaint, ¶¶ 23.) The Complaint alleges that Defendants failed to pay members of the Putative Class at least minimum wage for all hours worked due to Defendants' "unlawful rounding policy" related to off-the-clock work associated with putting on and taking off Defendants' uniform. (Complaint, ¶¶ 24, 53-55.) While Defendants deny the validity and merit of Plaintiff's minimum wage claims, for purposes of removal only, Defendants estimate that adding 20 minutes to all shifts worked at the average hourly rate for the Putative Class assuming an average shift of 5.5 hours as alleged in the Complaint places \$2,139,174 in controversy on the minimum wage claim. (Thuang Decl., ¶ 5.)
- 40. The claim for **missed rest breaks** involves approximately 2,736 members of the Putative Class with 507,314 shifts in controversy from February 4, 2016 to June 3, 2020. (Thuang Decl., ¶ 4.) In the Complaint Plaintiff alleges that he worked 5-6 days per week and regularly worked shifts that ranged from 5.5 to 8 hours per day. (Complaint, ¶¶ 21-24.) The Complaint alleges that members of the Putative Class worked more than 4 hours without receiving a 10 minute rest break or compensation at one hour of their regular rate of pay. (Complaint, ¶¶ 25-26.) The Complaint further alleges that Defendants failed to establish and/or enforce a rest break policy. (Complaint, ¶ 27.) While DEFENDANTS' NOTICE OF REMOVAL

 9. CASE NO.

Defendants deny the validity and merit of Plaintiff's missed rest break claims and for purposes of removal only, Defendants assume that all shifts worked were on average 5.5 hours as alleged in the Complaint and thus eligible for a rest break. The total potential damages for the alleged rest break violation can be determined by multiplying the number of shifts for the Putative Class by the average hourly rate for the Putative Class by one hour per shift. Applying a 10 percent violation rate to the total potential damages for alleged missed rest breaks places \$641,760 in controversy on the missed

rest break claim. (Thuang Decl., ¶ 6.)

- With respect to the claim for **non-compliant wage statements**, Plaintiff alleges that Defendants failed to maintain accurate itemized wage statements in violation of Labor Code section 226. (Complaint, ¶¶ 29, 63-64.) Plaintiff alleges that he and the members of the Putative Class are entitled to penalties provided for under Labor Code section 226, which are \$50 per employee for the initial pay period in which a violation occurs, and \$100 per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per violation (\$4,000). Defendants deny the validity and merit of Plaintiff's non-compliant wage statement claims. However, for purposes of removal only and given the one year statute of limitation applicable to section 226 claims (i.e., the class period beginning February 4, 2019), Defendants determined the amount in controversy by multiplying the number of pay periods by the statutory penalties alleged above. From February 4, 2019 to June 3, 2020, approximately 1,370 members of the Putative Class worked 18,540 pay periods. (Thuang Decl., ¶7.) Given that the Putative Class is paid bi-weekly, Defendants estimate \$1,785,500 in controversy on Plaintiff's non-compliant wage statement claim. (Thuang Decl., ¶¶ 2,7.)
- 42. With respect to the claim for waiting time penalties, Plaintiff alleges that Defendants failed to timely pay final wages to him and members of the Putative Class whose employment ended during the class period, as required by Labor Code sections 201-203. (Complaint, ¶ 67-72.) While Defendants deny the validity and merit of Plaintiff's waiting time penalties claims, for purposes of removal only, Defendants determined the amount placed in controversy by applying the maximum statutory penalty authorized. Approximately 1,917 members of the Putative Class were terminated within the three (3) year statute of limitations applicable to this claim (i.e., the class period beginning DEFENDANTS' NOTICE OF REMOVAL 10. CASE NO.

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February 4, 2017). (Thuang Decl., \P 8.) Assuming a 5.5-hour average shift as alleged in the Complaint, Defendants estimate waiting time penalties for the Putative Class by multiplying 5.5 hours per day by the average hourly rate of the Putative Class by the maximum thirty (30) days, which places \$4,001,258 in controversy on the waiting time penalty claims. (*Id.*)

- 43. In addition, the Complaint seeks recovery of attorneys' fees and costs. (*See* Complaint, ¶¶ 82, 94, Prayer for Relief, p. 18.) It is well-settled that claims for statutory attorneys' fees are to be included in the amount in controversy. *See*, *e.g.*, *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005), *cert. denied*, 127 S. Ct. 157 (2006); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-1156 (9th Cir. 1998) (attorneys' fees may be taken into account to determine jurisdictional amounts). The attorneys' fees benchmark in the Ninth Circuit is 25 percent. *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989) ("We note with approval that one court has concluded that the 'bench mark' percentage for the fee award should be 25 percent.") (citation omitted); *Lo v. Oxnard Euro. Motors, LLC*, No. 11-CV-1009, 2012 US. Dist. LEXIS 73983, *8-9 (S.D. Cal. May 29, 2012) ("The Ninth Circuit has accepted as a benchmark for an attorneys' fees awards a twenty-five percent of the common fund recovery.").
- 44. Defendants deny the validity and merits of Plaintiff's claims, the legal theories upon which they are purportedly based, and the claims for monetary and other relief that flow from them. Notwithstanding Plaintiff's failure to allege the total amount of damages claimed, the amount placed in controversy as alleged by Plaintiff's claims in this action exceeds the jurisdictional threshold. A conservative estimate of the amount placed in controversy is roughly \$8,567,692, excluding the claims for unpaid overtime wages, PAGA penalties, and attorneys' fees.

Cause of Action	Amount in Controversy
Unpaid Minimum Wage	\$ 2,139,174
Missed Rest Periods	\$ 641,760
Non-Compliant Wage Statements	\$ 1,785,500
Waiting Time Penalties	\$ 4,001,258
Unpaid Overtime	Not Estimated
PAGA Penalties	Not Estimated
Attorneys' Fees	Not Estimated
Total	\$ 8,567,692

45. Removal of this action is therefore proper as the aggregate value of Plaintiff's class 1 2 causes of action for unpaid minimum wages, missed rest periods, non-compliant wage statements, 3 waiting time penalties, and attorneys' fees is well in excess of the CAFA jurisdictional requirement of \$5,000,000. See 28 U.S.C. § 1332(d)(2). 4 5 NOTICE TO STATE COURT AND ADVERSE PARTY 6 46. Pursuant to 28 U.S.C. § 1446(d), a "Notice to State Court and Adverse Parties of Filing 7 Notice of Removal" and a copy of this Notice of Removal are being contemporaneously filed with the 8 State Court and served on Plaintiff's counsel of record. Attached as **Exhibit D** is a true and exact copy of the "Notice to State Court and Adverse Parties of Filing Notice of Removal" (without exhibits). 9 **CONCLUSION** 10 47. This action is removable to this Court because: (a) Defendants have established by a 11 preponderance of the evidence that the amount placed in controversy for this class action exceeds the 12 13 \$5 million jurisdictional minimum for CAFA removal; (b) this Notice of Removal is filed within thirty days (30) after Defendants were served with the Complaint; and (c) the State Court in which this action 14 was commenced is within this Court's district and division. 15 16 WHEREFORE, please take notice that Defendants Benihana Inc. and Benihana National Corp. 17 hereby remove the above-entitled action from the Superior Court of the State of California for the 18 County of San Francisco to the United States District Court for the Northern District of California. 19 20 DATED: June 12, 2020 21 /s/ Chad D. Greeson CONSTANCE E. NORTON 22 CHAD D. GREESON LITTLER MENDELSON, P.C. 23 Attorneys for Defendants 24 BENIHANA NATIONAL CORP. and BENIHANA INC. 25 26

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EXHIBIT A

Deputy Clerk

Arlo García Uriarte, SBN 231764 Un Kei Wu, SBN 270058 LIBERATION LAW GROUP, P.C. FILED San Francisco County Superior Count 2760 Mission Street San Francisco, CA 94110 FEB 04 2020 Telephone: (415) 695-1000 Facsimile: (415) 695-1006 CLEAK OF THE COURT KALENE APOLONIO 5 Attorneys for PLAINTIFF SALVADOR ROSALES 6 7 SUPERIOR COURT OF THE STATE OF CALIFORNIA 8 FOR THE COUNTY OF SAN FRANCISCO 9 10 Case No.: CGC -20-582696 SALVADOR ROSALES, on behalf of himself, on 11 behalf of others similarly situated and the general CLASS ACTION COMPLAINT public, 12 PLAINTIFF, (1) OVERTIME COMPENSATION 13 (2) UNPAID WAGES (3) REST PERIOD VIOLATIONS 14 (4) WAGE STATEMENTS BENIHANA NATIONAL CORP., BENIHANA, (5) WAITING TIME PENALTIES 15 INC. and DOES 1 through 10, inclusive. (6) PRIVATE ATTORNEY GENERAL ACT (Labor Code §§2699, et seq.) 16 (7) UNFAIR COMPETITION IN DEFENDANTS. VIOLATION OF CAL. BUSINESS 17 AND PROFESSIONS CODE §§ 17200 ET. SEQ 18 19 JURY TRIAL DEMANDED 20 21 22 23 24 25

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1. PLAINTIFF SALVADOR ROSALES (hereinafter "PLAINTIFF"), submits this Complaint on behalf of himself and other similar situated, against BENIHANA NATIONAL CORP., and BENIHANA, INC., and DOES 1-10 (hereinafter "DOES") (collectively "DEFENDANTS"). The allegations below are made on PLAINTIFF'S information and beliefs:

I. INTRODUCTION

- 2. This class action is for the purpose of prosecuting claims under California Labor Code §§ 201-204, 226.7, 510, 512, 1174, and 2699, California Business and Professions Code § 17200, et seq., (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare Commission ("IWC").
- This complaint challenges systemic illegal employment practices by DEFENDANTS
 resulting in violations of the California Labor Code, Business and Professions Code and the applicable
 IWC Wage Order.
- 4. The Private Attorney General Act of 2004 ("PAGA") codified in Cal. Labor Code § 2698, et seq. allows a private citizen to pursue civil penalties on behalf of the State of California Labor and Workforce Development Agency ("LWDA"). The aggrieved employee is allowed to seek civil penalties not only for violations that he or she personally suffered but also for violations of "other current or former employees" pursuant to Cal. Labor Code § 2699(a).
- 5. PLAINTIFF is informed and believes and based thereon allege DEFENDANTS have engaged in, among other things a system of willful violations of the California Labor Code, Business and Professions Code and the applicable IWC Wage Order by creating and maintaining policies, practices and customs that knowingly deny employees, such as PLAINTIFF and putative class members: (1) overtime compensation, (2) compensation for unpaid wages (minimum wage) (3) compensation for denied rest breaks, (4) accurate, itemized wage statements, (5) waiting time penalties,

(6) Private Attorney General Act (Labor Code §§2699, et seq.), and (7) unfair competition in violation of Cal. Business and Professions Code §§ 17200 ET. SEQ.

6. The policies, practices and customs of DEFENDANTS described above and below have resulted in unjust enrichment of DEFENDANTS and an unfair business advantage over businesses that routinely adhere to the strictures of the California Labor Code, Business and Professions Code and Industrial Welfare Commission ("IWC").

II. JURISDICTION AND VENUE

- 7. The Court has jurisdiction over the violations of the California Labor Code §§ §§ 201-204, 223, 226.7, 510, 512, 1174, 1194, and 2699, California Business and Professions Code § 17200, et seq., (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare Commission including IWC Wage Order No. 5.
- 8. Jurisdiction is proper in this Court because alleged damages exceed Twenty-five Thousand Dollars (\$25,000.00). PLAINTIFF meets the requirements of C.C.P. § 382 to bring this action because, among other reasons, the question is one of common or general interest, is a question of many persons and/or the parties are numerous and it is impracticable to bring them all before the Court.
- 9. Venue is proper because DEFENDANTS' principal place of business is located within the county of San Francisco. PLAINTIFF worked for DEFENDANTS in the county of San Francisco.

III. PARTIES

- 10. PLAINTIFF is a competent individual who was formerly employed by DEFENDANTS as full-time or part-time employee who received hourly wages.
- 11. DEFENDANT BENIHANA NATIONAL CORP. is a Delaware corporation doing business in the State of California as Benihana.
- 12. DEFENDANT BENIHANA, INC. is a Delaware corporation doing business in the State of California as Benihana.

- 13. DEFENDANTS were joint employers of PLAINTIFF and other employees similarly situated during the relevant class claim period.
- 14. At all times herein mentioned DEFENDANTS and DOES 1 through 10, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. DEFENDANTS own and operate an industry, business and establishment throughout California. As such, and based upon all the facts and circumstances incident to DEFENDANTS' business in California, DEFENDANTS are subject to California laws that regulate the employment and working conditions of employees in California, including California Labor Code §§ 201-204, 223, 226.7, 510, 512, 1174, 1194, and 2699, California Business and Professions Code § 17200, et seq., (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare Commission including IWC Wage Order No. 5.
- 15. PLAINTIFF does not know the true names or capacities, whether individual, partner or corporate, of the DEFENDANTS sued herein as DOES 1 through 10, inclusive, and for that reason, said DEFENDANTS are sued under such fictitious names, and PLAINTIFF prays leave to amend this complaint when the true names and capacities are known.
- 16. PLAINTIFF is informed and believes and thereon alleges that each of said fictitious DEFENDANTS was responsible in some way for the matters alleged herein and proximately caused PLAINTIFF and members of the class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

IV. STATEMENT OF FACTS

- 17. DEFENDANTS own and operate Benihana in San Francisco, California.
- 18. PLAINTIFF was hired by DEFENDANTS from November 14, 2013 to March 28, 2019. PLAINTIFF worked for DEFENDANTS as a preparation cook.

- 19. The class period ("CLASS PERIOD") is four years from the filing of this action, through the entry of final judgment in this action.
 - 20. PLAINTIFF was a non-exempt hourly employee for DEFENDANTS.
- 21. During the course of his employment, PLAINTIFF worked for DEFENDANTS approximately five (5) to six (6) days per week.
- 22. During the course of his employment PLAINTIFF regularly worked on shifts that ranged from approximately five and half (5.5) to eight (8) hours per day.
- 23. Instructed by supervisors, PLAINTIFF and similarly situated current and former employees were required to arrive approximately ten (10) minutes before their scheduled shift to change into DEFENDANTS' uniform. At the end of their scheduled shift, PLAINTIFF and similarly situated current and former employees had to clock out before removing their uniform. It took PLAINTIFF and similarly situated current and former employees on average ten (10) minutes to remove their uniform and leave the restaurant. PLAINTIFF, and similarly situated current and former employees were not compensated for time spent changing into and out of their uniform. PLAINTIFF and similarly situated current and former employees were not allowed to take their uniforms home.
- 24. When PLAINTIFF and similarly situated current and former employees worked more than eight hours in one day and/or worked more than forty hours in one workweek DEFENDANTS failed to compensate PLAINTIFF, and similarly situated current and former employees for all their overtime hours accumulated due to off-the-clock time they spent dressing and undressing with DEEFENDANTS' uniform.
- 25. During the course of his employment, PLAINTIFF and similarly situated current and former employees worked for periods of more than four (4) hours without a rest period of ten (10) minutes. For instance, during PLAINTIFF was assigned tasks that consisted of a heavy workload that

he was required to finish, and therefore, he was expected to prioritize finishing his tasks over taking breaks.

- 26. PLAINTIFF, and similarly situated current and former employees, were not compensated one hour of their regular rate of pay for each time they are not provided rest breaks.
- 27. During the CLASS PERIOD, DEFENDANTS failed to establish and/or enforce a rest break policy.
- 28. DEFENDANTS did not have a payroll system and practice in place that compensates employees one (1) hour premium for denied or improper rest breaks.
- 29. DEFENDANTS have failed to deliver accurate itemized wage statements of all wages earned by PLAINTIFF, and similarly situated current and former employees. The wage statements are not accurate in that they do not reflect the required compensation for all hours and minutes worked and denied or improper rest breaks.
- 30. PLAINTIFF, and similarly situated current and former employees, were not able to ascertain if they were compensated for denied or improper and rest breaks.
- 31. PLAINTIFF, and similarly situated current and former employees, are owed waiting time penalties because upon their separation, they were not paid all the money and compensations owed to them including wages, overtime compensation, and rest period compensation.

V. CLASS ACTION ALLEGATIONS

32. PLAINTIFF brings this action on behalf of himself and a putative class of similarly situated employees pursuant to California Code of Civil Procedure § 382. The class is defined as: "All current and former hourly or non-exempt employee's of DEFENDANTS who worked in the State of California at any time from four years from the date of the filing of this action through the entry of final judgment in this action."

33. NUMEROSITY AND ASCERTAINABILITY: The members of the class are so numerous that joinder of all members would be impractical, if not impossible. PLAINTIFF is informed and believes that there are over one hundred (100) employees working for DEFENDANTS in California at any one time. The identity of putative class members is readily ascertainable by review of DEFENDANTS' records. Notice can be provided to DEFENDANTS' employees using techniques and a form of notice similar to those customarily used in class action lawsuits.

- 34. PLAINTIFF is informed, believes, and based thereon alleges that DEFENDANTS' employees are denied:
 - a) Compensation for overtime worked;
 - b) Compensation for all hours worked;
 - c) Missed or improper rest period compensation;
 - d) Accurate itemized wage statements; and
 - e) Waiting time penalties.
- 35. ADEQUACY OF REPRESENTATION: PLAINTIFF is member of the putative class. PLAINTIFF does not have any conflicts of interest with other putative class members and will prosecute the case vigorously on behalf of the putative class. PLAINTIFF will fairly and adequately represent and protect the interests of putative class members. PLAINTIFF'S counsel is competent and experienced in litigating wage and hour class actions.
- 36. SUPERIORITY OF CLASS ACTION: A class action is superior to all other available means of fair and efficient adjudication of this controversy. Individual joinder of all putative class members is not practicable, and questions of law and fact common to the putative class predominate over any questions affecting only individual members of the class. DEFENDANTS' employees have been damaged and are entitled to recovery by reason of DEFENDANTS' unlawful policies and/or practices described herein. Because the damages suffered by individual putative class members may be

relatively small, albeit significant, the expense and burden of individual litigation make it impractical for most putative class members to seek individual redress for the wrongful conduct alleged. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

- 37. The Labor Code and IWC Wage Order No. 5, are broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic conditions and bargaining power in setting onerous terms and conditions of employment.
- 38. The nature of this action and the format of laws available to PLAINTIFF and members of the putative class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate DEFENDANTS would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual PLAINTIFF with their vastly superior financial and legal resources. Requiring each putative class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.
- 39. The prosecution of separate actions by individual putative class members, even if possible, would create a substantial risk of: (a) Inconsistent or varying adjudications with respect to individual putative class members against the DEFENDANTS, which would establish potentially incompatible standards of conduct for the DEFENDANTS; and/or (b) Adjudications with respect to individual putative class members which would, as a practical matter, be dispositive of the interest of the other putative class members not parties to the adjudications, or which would substantially impair

or impede the ability of DEFENDANTS' aggrieved employees to protect their interests. Further, the claims of the individual members of the putative class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

- 40. **COMMON QUESTION OF LAW AND FACT:** There are questions of law and fact common to putative class members that predominate over any questions affecting only individual members of the class. These common questions of law and fact include:
 - 41. Whether DEFENDANTS have failed to pay employees wages for all overtime worked:
 - 42. Whether DEFENDANTS have failed to pay employees wages for all hours worked;
- 43. Whether DEFENDANTS have failed to provide compensation to employees who were not provided rest periods in accordance with applicable law;
- 44. Whether wage statements provided to DEFENDANTS' employees are adequate under applicable law, and whether employees are entitled to receive statutory penalties from DEFENDANTS for each wage statement violation committed;
- 45. Whether DEFENDANTS willfully failed to pay all wages due to DEFENDANTS' employees who were discharged or quit, and whether such employees are entitled to receive statutory penalties from DEFENDANTS for each violation committed; and
- 46. **TYPICALITY:** PLAINTIFF'S claims are typical to the claims of all members of the putative class. PLAINTIFF is member of the putative class and has suffered the alleged, class-wide violations described herein.

VI. <u>DAMAGES</u>

47. As a direct, foreseeable, and proximate result of DEFENDANTS' conduct, PLAINTIFF and similarly situated current and former employees are owed, among other things, payments for all hours worked, missed or improper rest periods plus interest, waiting time penalties under Labor Code §

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203, and other statutory penalties in an amount that exceeds \$25,000, the precise amount of which will be proven at trial.

FIRST CAUSE OF ACTION

(Unpaid Overtime Compensation)

- 48. PLAINTIFF realleges and incorporates the above allegations by reference.
- 49. Pursuant to the IWC Wage Order No. 5 and Cal. Labor Code §§ 500, 510, and 1194, PLAINTIFF and similarly situated current and former employee are owed overtime compensation for all overtime hours. DEFENDANTS were required to compensate PLAINTIFF, and similarly situated employees of DEFENDANTS, for all their overtime worked.
- 50. During the class CLAIM PERIOD, DEFENDANTS failed to compensate PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, for all overtime worked.
- 51. As a result of DEFENDANTS' unlawful time recording policy, PLAINTIFF and similarly situated current and former employees have been deprived overtime compensation in an amount determined at trial, and are entitled to recovery of such amounts, plus interest thereon, under Labor Code § 1194.
- 52. PLAINTIFF, on behalf of himself and similarly situated current and former employees of DEFENDANTS, requests reliefs as described below.

SECOND CAUSE OF ACTION

(Unpaid Wages)

- 53. PLAINTIFF realleges and incorporates the above allegations by reference.
- 54. Pursuant to Labor Code §§ 1194 and 1194.2 and IWC Wage Order No. 5, notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage for any work performed is entitled to recover the unpaid balance of the full amount of

this minimum wage, liquidated damages, including interest thereon, reasonable attorney's fees, and costs of suit.

- 55. DEFENDANTS have failed to pay PLAINTIFF and putative class members for all hours worked at least at minimum wage because of their unlawful rounding policy.
- 56. PLAINTIFF, on behalf of himself and other separated employees of DEFENDANTS, requests reliefs as described below

THIRD CAUSE OF ACTION

(Failure to Pay Compensation for Missed & Improper Rest Periods)

- 57. PLAINTIFF realleges and incorporates the above allegations by reference.
- 58. Pursuant to Labor Code § 226.7(a) and IWC Wage Order No. 5, DEFENDANTS are required to authorize and permit PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, the opportunity to take rest periods based upon total hours worked, at a rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof, with no deduction from wages.
- 59. DEFENDANTS failed and refused to authorize and permit PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof, in violation of Labor Code § 226.7(a) and IWC Wage Order No. 5.
- 60. DEFENDANTS have violated Labor Code § 226.7 and IWC Wage Order No. 5, by failing to pay PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, one (1) hour of pay at their regular rate of pay for each work day rest periods were required but not provided.
- 61. PLAINTIFF, on behalf of himself and similarly situated current and former employees of DEFENDANTS, requests reliefs as described below.

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FOURTH CAUSE OF ACTION

(Failure to Provide Accurate/Itemized Wage Statements)

- 62. PLAINTIFF realleges and incorporates the above allegations by reference.
- As a pattern and practice, DEFENDANTS failed to furnish PLAINTIFF, and similarly 63. situated current and former employees of DEFENDANTS, an accurate itemized statement in writing showing all gross wages earned, including the premium compensation for any denied rest breaks at the applicable hourly rates of PLAINTIFF, and similarly situated current and former employees of DEFENDANTS.
- 64. The wage statements are not accurate in that they do not reflect all actual hours worked, including all overtime hours worked. The wage statements do not reflect the required compensation for missed or improper rest periods.
- 65. As such, PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, are entitled to payment from DEFENDANTS of the greater of actual damages or \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each subsequent violation, up to a maximum of \$4000.00, pursuant to Labor Code § 226, as well as reasonable attorney's fees and costs of suit.
- PLAINTIFF, on behalf of himself and similarly situated current and former employees 66. of DEFENDANTS, requests reliefs as described below.

FIFTH CAUSE OF ACTION

(Labor Code §§ 201-203- Waiting Time Penalties)

- PLAINTIFF realleges and incorporates by reference the paragraphs above paragraphs. 67.
- 68. California Labor Code § 201 requires an employer who discharges an employee to pay all compensation due to that employee immediately upon discharge.

- 69. California Labor Code § 202 requires an employer to pay all compensation due to employees who quit within 72 hours of that employee quitting, unless the employee provides at least 72 hours' notice of quitting, in which case all compensation is due at the end of the employee's final day of work.
- 70. Labor Code § 203 provides that if an employer willfully fails to pay compensation as required by § 201 or § 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to 30 work days.
- 71. DEFENDANTS willfully failed and refused to timely pay compensation and wages, including unpaid wages and overtime compensation, to PLAINTIFF, and other separated employees of DEFENDANTS, at the end of their employment.
- 72. As a result, DEFENDANTS are liable to PLAINTIFF, and other separated employees of DEFENDANTS, for waiting time penalties, together with interest thereon, under Labor Code § 203.
- 73. PLAINTIFF, on behalf of himself and other separated employees of DEFENDANTS, requests reliefs as described below.

SIXTH CAUSE OF ACTION

(Civil Penalties Pursuant to Private Attorney General Act)

- 74. PLAINTIFF realleges and incorporates the above allegations by reference.
- 75. Pursuant the foregoing violations of statutes and regulations permit PLAINTIFF to recover civil penalties through this action. The PAGA imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred (\$200) per pay period per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

- 76. DEFENDANTS' violations of California wage and hour laws enable PLAINTIFF to recover civil penalties as aggrieved employee on behalf of himself and other current and former employees of DEFENDANTS.
- 77. PLAINTIFF has complied with the procedural requirements specified in Labor Code §2699.3. PLAINTIFF has therefore exhausted all administrative procedures required under Labor Code §§2698, 2699 and 2699.3, and are justified as a matter of right in bringing forward this cause of action.
- 78. On July 17, 2019, PLAINTIFF, through counsel, pursuant to the PAGA, sent via certified mail a letter-notice of violations to the LWDA, as required by Labor Code §2699.3. A copy of this letter-notice is attached to this Complaint as Exhibit "A."
- 79. Sixty-five (65) calendar days have passed since the postmark date of PLAINTIFF'S notices and the LWDA has not notified PLAINTIFF'S counsel that it does not intend to investigate the allegations. Pursuant to Labor Code §2699.3 (a)(2)(A), PLAINTIFF may commence a civil action pursuant to Labor Code §2699.
- 80. As a result of DEFENDANTS' violation of numerous provisions of the Labor Code, PLAINTIFF seeks all civil penalties, reasonable attorney's fees and costs available pursuant to Labor Code §2699.
- 81. PLAINTIFF is likely to have evidentiary support, after research and reasonable opportunity for further investigation and discovery, to further prove penalties and violations. PLAINTIFF will amend this complaint if appropriate and required to seek all applicable penalties for violations which the LWDA has failed to investigate and/or failed to issue a citation.
- 82. Pursuant to Labor Code §2699(i), PLAINTIFF, as aggrieved employee on behalf of himself and other current and former employees of DEFENDANTS, should be awarded twenty-five

percent (25%) of all penalties due under California law, interest, attorneys' fees and costs. The LWDA should be awarded seventy-five percent (75%) of the penalties due and awarded.

SEVENTH CAUSE OF ACTION

(Business and Professions Code § 17200 et seq. violations.)

- 83. California Business and Professions Code § 17200 et. seq. prohibits acts of unfair competition including any "unlawful and unfair business practices."
- 84. The conduct of DEFENDANTS, as alleged herein, has been and continues to be unfair, unlawful, and deleterious to PLAINTIFF and similarly situated current and former employees, and to the general public.
- 85. PLAINTIFF hereby seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5. PLAINTIFF is a "person" within the meaning of Business and Professions Code § 17204 and therefore have standing to bring this suit for injunctive relief and restitution.
- 86. The prompt and proper payment of wages is a fundamental public policy of the State of California. It is also the public policy of the State to enforce minimum labor standards ensuring that employees are not required or permitted to work under substandard and unlawful conditions and to protect those employers who comply with the law from losing competitive advantage to other employers that fail to comply with labor standards and requirements.
- 87. Through the conduct alleged herein, DEFENDANTS acted contrary to these public policies and have thus engaged in unlawful and/or unfair business practices in violation of Business and Professions Code §§ 17200 et. seq. depriving PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, the rights, benefits, and privileges guaranteed to employees under California law.

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and practices as defined by Cal. Business & Professions Code § 17200, by engaging in the following:
 a) Failing to pay all overtime worked, to PLAINTIFF, and similarly situated current and former employees of DEFENDANTS;

filing of this action, DEFENDANTS have committed unlawful, unfair, and/or fraudulent business acts

 Failing to pay all hours worked, to PLAINTIFF, and similarly situated current and former employees of DEFENDANTS;

Beginning at an exact date unknown to PLAINTIFF, but at least four years prior to the

- Failing and refusing to authorize and permit proper rest breaks to PLAINTIFF, and similarly situated current and former employees of DEFENDANTS;
- failing to pay all accrued rest break compensation to PLAINTIFF, and similarly situated current and former employees of DEFENDANTS;
- e) Failing to provide accurate itemized wage statements to PLAINTIFF, and similarly situated current and former employees of DEFENDANTS;
- f) Failing to pay all wages owed to PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, at the end of their employment; and
- 89. By engaging in these business practices, which are unfair and unlawful within the meaning of Business and Professions Code §§ 17200 et. seq., DEFENDANTS harm PLAINTIFF, similarly situated current and former employees of DEFENDANTS, and the general public, and have gained an unfair competitive edge.
- 90. Under Business and Professions Code § 17203, PLAINTIFF is entitled to obtain restitution on behalf of himself and others similarly affected by the unfair and/or unlawful business practices as set forth herein.
- 91. Pursuant to Business and Professions Code § 17202, PLAINTIFF is entitled to specific reliefs enforcing the penalty provisions of various Labor Code sections for himself and for members of

the general public in amounts to be proven at trial. Failure to enforce the penalties due would result in the unlawful enrichment of DEFENDANTS and would promote unfair competition.

- 92. Pursuant to Business & Professions Code § 17203, injunctive relief is necessary to prevent DEFENDANTS from continuing to engage in the unfair business practices as alleged herein.
- 93. PLAINTIFF alleges, on information and beliefs, that DEFENDANTS, and persons acting in concert with them, have committed and will continue to commit the above-described unlawful and/or unfair acts unless restrained or enjoined by this Court. Unless the relief prayed for below is granted, a multiplicity of actions will result. PLAINTIFF and other interested persons have no plain, speedy, or adequate remedy at law, in that pecuniary compensation alone would not afford adequate and complete relief. The above-described acts will cause great and irreparable damage to PLAINTIFF and other interested persons unless DEFENDANTS are restrained from committing further illegal acts.
- 94. PLAINTIFF' success in this action will result in the enforcement of important rights affecting the public and will confer a significant benefit upon the general public. Private enforcement of the rights enumerated in this Complaint are necessary, as public agencies have only sought limited enforcement of those rights, if any. The named PLAINTIFF individually, and by and through counsel, is incurring a financial burden in pursuing this action on behalf of the general public. PLAINTIFF seeks to enjoin the above-referenced unlawful actions under California's Labor Code Industrial Welfare Commission Wage Orders. Therefore, PLAINTIFF seeks an award of attorneys' fees and costs of suit on this action pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws.

VII. PRAYER

WHEREFORE, PLAINTIFF on his own behalf and on the behalf of the members of the class, prays for judgment as follows:

- For an order certifying the proposed class;
- 2. For compensatory and consequential damages;

- 3. Prejudgment interest pursuant to Labor Code § 218.6 accrued on all due and unpaid wages from the date that wages were due and payable, according to proof;
- 4. Pursuant to IWC Wage Order No. 5, and Labor Code §§ 204, and 1194(a), an award in the

amount of unpaid wages, owed by DEFENDANTS for the four years preceding the filing of this complaint, plus interest.

- 5. Compensation of one hour at the regular rate of pay for each rest period denied in violation of Labor Code § 226.7 and IWC Wage Order No. 5, according to proof;
- 6. Waiting time penalties pursuant to Labor Code §§ 201-203;
- 7. Pursuant to Business & Professions Code § 17203, an award of restitution for the unjustly amounts earned or retained DEFENDANTS by virtue of their engaging in unlawful conduct, according to proof;
- 8. For civil penalties provided for in Labor Code § 1199 for violation IWC Wage Order No. 5. §13 (A);
- 9. An award of twenty-five percent (25%) of all penalties due under California law, interest, attorneys' fees and costs to PLAINTIFF as aggrieved employee on behalf of himself and other current and former employees of DEFENDANTS, pursuant to Labor Code §2699(i) and an award of seventy-five percent (75%) of the penalties in favor of the LWDA; and
- 10. Such other and further relief as the Court deems just and proper.

Dated: February 4, 2020 LIBERATION LAW GROUP, P.C. 2 By: 3 Arlo Garcia Uriarte 4 Un Kei Wu Attorneys for PLAINTIFF 5 6 VIII. DEMAND FOR JURY TRIAL 7 PLAINTIFF hereby demands a trial by jury. 8 9 DATED: February 4, 2020 LIBERATION LAW GROUP, P.C. 10 11 By: Arlo Garcia Uriarte 12 Un Kei Wu 13 Attorneys for PLAINTIFF 14 15 16 17 18 19 20 22 23 24 25 26 28 19

EXHIBIT A

Attorneys: Arlo García Uriarte Un Kei Wu Ernesto Sánchez Daniel P. Iannitelli Nick Aguilar, Adm. in Fla.



Legal Assistants:
Andrea Ortiz
Lorenzo Barrera Cruz
Ivette Olguin
Vicent Uriarte
Crystina Arreola-Nunez
Mariana Toledo Segarra

2760 Mission Street · San Francisco, CA 94110 · 415 695-1000

July 17, 2019

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency Attn. PAGA Administrator 455 Golden Gate Avenue, 9th Floor San Francisco, CA 94102

Re:

Salvador Rosales v Benihana National Corp and Benihana, Inc.

Notice of Violations

Dear PAGA Administrator:

Pursuant to the Private Attorneys General Act of 2004, attached is a list of violations relevant to this action. Further investigation and discovery may result in shedding light to further violations. Please consider this letter and the attached as the notice required by California Labor Code Section 2699.3.

Pursuant to Labor Code 2699(a), Plaintiff Salvador Rosales hereby apply to recover through civil action on behalf of himself and other current and former aggrieved employees.

Very truly yours,

LIBERATION LAW GROUP, P.C.

Arlo Uriarte

w/enclosures

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Liberation Law Group P.C. Rosales Notice of Violations July 17, 2019

Benihana National Corp. and Benihana, Inc.

Labor Code 2699 Notice of Violations

On or about November 14, 2013, Salvador Rosales started to work for Benihana National Corp, Inc. (hereinafter "Defendant"). He worked at the Benihana restaurant located in San Francisco, California. Mr. Rosales worked approximately six days a week as a preparation cook. His supervisors were Jeff (last name unknown) or Virginia (last name unknown).

Instructed by his supervisors, Mr. Rosales was required to arrive approximately ten (10) minutes before his scheduled shift time to change into an uniform, which consisted of a shirt with the restaurant logo, apron and chef hat. At the end of Mr. Rosales's scheduled shift, Mr. Rosales had to clock out before removing his uniform. It took Mr. Rosales on average ten (10) minutes to remove his uniform and leave the restaurant. Mr. Rosales was not compensated for time spent change into and out of his uniform.

Mr. Rosales worked more than eight hours in one day and/or worked more than forty hours in one workweek and Defendant failed to compensate Mr. Rosales overtime pay for his overtime hours.

Sometimes, Mr. Rosales worked seven straight days in one workweek. Defendant failed to compensate Mr. Rosales at his corresponding overtime rate for the first eight hours of work on the seventh consecutive day of the workweek.

Defendant has no policy or practice to provide its employees with rest breaks. During the course of Mr. Rosales' employment, Defendants failed and refused to authorize and permit Mr. Rosales to take 10-minute rest periods for every four hours worked, or major fraction thereof.

Defendant never paid Mr. Rosales one hour of pay at his regular rate of pay for each work day rest breaks were required but not provided.

Defendant failed to provide Mr. Rosales accurate itemized wage statements. the wage statement of Mr. Rosales failed to reflect the rest break premium pay Mr. Rosales was owed.

In or around March 29, 2019, Defendant terminated the employment of Mr. Rosales. Defendant failed to pay all wages due to Mr. Rosales upon his termination.

Mr. Rosales is informed and believes that other current and former aggrieved employees of Defendant were subjected to the same wage and hour violations as Mr. Rosales noted herein. Pursuant to Labor Code § 2698, Mr. Rosales, on behalf of himself and all current and former aggrieved employees of Defendant, seek to recover civil penalties against Defendant for Labor Code violations pursuant to, but not limited to:

Liberation Law Group P.C. Rosales Notice of Violations July 17, 2019

Defendants failed to pay Mr. Rosales for all hours worked in violation of Labor Code §§ 1194 and 1197. Defendants violated section 4 of the Industrial Welfare Commission Wage Order 5 by failing to pay Mr. Rosales all hours worked at least at the minimum wage rate.

Violations to Labor Code § 1194 - penalties pursuant to Labor Code §2699(f); violation to Labor Code § 1197 - penalties pursuant to Labor Code §§ 1197.1, 558, and 2699(f); violations to Wage Order 5 section 4 - penalties pursuant to § 20 of Wage Order 5.

By requiring Mr. Rosales to work overtime and not properly compensating him for overtime hours worked, Defendant violated Labor Code §§ 510 and 1194, and section 3 of the Industrial Welfare Commission Wage Order 5 by failing to pay Plaintiff for all overtime hours worked at one and one half times his regular rate of pay.

Violations to Labor Code § 510 – penalties pursuant to Labor Code §§ 558 and 2699(f); violations to Labor Code § 1194 - penalties pursuant to Labor Code §2699(f); violations to Wage Order 5 section 3 – penalties pursuant to § 20 of Wage Order 5.

Defendant violated Labor Code §§ 226.7(a) and 512, and section 12 of the Industrial Welfare Commission Wage Order 5, by failing to authorize and provide Mr. Rosales with proper rest breaks and then failing to provide Mr. Rosales the required one-hour compensation when rest breaks are not properly provided.

Violations to Labor Code § 226.7(a) - penalties pursuant to § 2699(f); violations to Labor Code § 512 - penalties pursuant to §§ 558 and 2699(f); violations to section 12 of IWC Order 5 - penalties pursuant to § 20 of IWC Order 5.

Defendant violated Labor Code § 226(a) and Wage Order 5 section 7 by failing to provide Mr. Rosales with accurate itemized wage that informed the premium penalties for improper rest periods.

Violations to Labor Code § 226(a) – penalties pursuant to §§ 226(e), 226.3, and 2699(f); violations to IWC Order 5 section 7 – penalties pursuant to § 20 of IWC Order

Defendant violated Labor Code §§ 201 through 203 by failing to pay Mr. Rosales all wages and compensation owed within 72 hours of his separation date.

Violations to Labor Code §§ 201 through 203 - penalties pursuant to Labor Code section 2699(f).

EXHIBIT B

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

BENIHANA NATIONAL CORP., BENIHANA, INC. and DOES 1 through 10, inclusive.

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

SALVADOR ROSALES, on behalf of himself, on behalf of others similarly situated and the general public,

R COURT USE ONLY

FOR COURT USE ONLY (SOLO PARA USO DE LA CORTE)

5-13-20-

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California

County of San Francisco 400 McAlliston Street San Francisco 400 Mc

County of San Francisco, 400 McAllister Street, San Francisco, CA 94102

CASE NUMBER: -20-502696

The name, address, and telephone number of plaintiffs attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): Arlo Uriarte, Liberation Law Group, P.C., 2760, Mission Street, San Francisco, CA 94110. (415)695-1000

DATE: (Fecha)	FEB 04 2020	CLERK OF THE (Secretario)	KALENE APULUINA	, Deputy (Adjunto)
(For proof of (Para prueb (SEAL)	of service of this sum oa de entrega de est	a citatión use el formulario Proof of Service of Summons, use Proof of Service of Summons, a citatión use el formulario Proof of Service of Summons, NOTICE TO THE PERSON SERVED: You are served 1 as an individual defendant. 2 as the person sued under the fictitious name of on behalf of (specify): Revivous, values as the person sued under the fictitious name of th	(POS-010)). f (specify): CCP 416.60 (minor) CCP 416.70 (conservate	ee)

Arlo García Uriarte, SBN 231764 Un Kei Wu, SBN 270058 LIBERATION LAW GROUP, P.C. 2760 Mission Street San Francisco, CA 94110 Telephone: (415) 695-1000 Facsimile: (415) 695-1006 5 Attorneys for PLAINTIFF SALVADOR ROSALES 6 7 8 FOR THE COUNTY OF SAN FRANCISCO 9 10 SALVADOR ROSALES, on behalf of himself, on 11 behalf of others similarly situated and the general public, 12 PLAINTIFF, 13 (2) UNPAID WAGES 14 (4) WAGE STATEMENTS BENIHANA NATIONAL CORP., BENIHANA, 15 INC. and DOES 1 through 10, inclusive. 16 (7) UNFAIR COMPETITION IN DEFENDANTS. 17 ET. SEQ 18 19 JURY TRIAL DEMANDED 20 21 22 23 24

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FILED San Francisco County Superior Count

FEB 04 2020

CLEAK OF THE COURT KALENE APOLONIO

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

Case No.: CGC -20-582696

CLASS ACTION COMPLAINT

- (1) OVERTIME COMPENSATION
- (3) REST PERIOD VIOLATIONS
- (5) WAITING TIME PENALTIES
- (6) PRIVATE ATTORNEY GENERAL ACT (Labor Code §§2699, et seq.)
- VIOLATION OF CAL. BUSINESS AND PROFESSIONS CODE §§ 17200

1. PLAINTIFF SALVADOR ROSALES (hereinafter "PLAINTIFF"), submits this Complaint on behalf of himself and other similar situated, against BENIHANA NATIONAL CORP., and BENIHANA, INC., and DOES 1-10 (hereinafter "DOES") (collectively "DEFENDANTS"). The allegations below are made on PLAINTIFF'S information and beliefs:

I. <u>INTRODUCTION</u>

- 2. This class action is for the purpose of prosecuting claims under California Labor Code §§ 201-204, 226.7, 510, 512, 1174, and 2699, California Business and Professions Code § 17200, et seq., (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare Commission ("IWC").
- This complaint challenges systemic illegal employment practices by DEFENDANTS
 resulting in violations of the California Labor Code, Business and Professions Code and the applicable
 IWC Wage Order.
- 4. The Private Attorney General Act of 2004 ("PAGA") codified in Cal. Labor Code § 2698, et seq. allows a private citizen to pursue civil penalties on behalf of the State of California Labor and Workforce Development Agency ("LWDA"). The aggrieved employee is allowed to seek civil penalties not only for violations that he or she personally suffered but also for violations of "other current or former employees" pursuant to Cal. Labor Code § 2699(a).
- 5. PLAINTIFF is informed and believes and based thereon allege DEFENDANTS have engaged in, among other things a system of willful violations of the California Labor Code, Business and Professions Code and the applicable IWC Wage Order by creating and maintaining policies, practices and customs that knowingly deny employees, such as PLAINTIFF and putative class members: (1) overtime compensation, (2) compensation for unpaid wages (minimum wage) (3) compensation for denied rest breaks, (4) accurate, itemized wage statements, (5) waiting time penalties,

- (6) Private Attorney General Act (Labor Code §§2699, et seq.), and (7) unfair competition in violation of Cal. Business and Professions Code §§ 17200 ET. SEQ.
- 6. The policies, practices and customs of DEFENDANTS described above and below have resulted in unjust enrichment of DEFENDANTS and an unfair business advantage over businesses that routinely adhere to the strictures of the California Labor Code, Business and Professions Code and Industrial Welfare Commission ("IWC").

II. JURISDICTION AND VENUE

- 7. The Court has jurisdiction over the violations of the California Labor Code §§ §§ 201-204, 223, 226.7, 510, 512, 1174, 1194, and 2699, California Business and Professions Code § 17200, et seq., (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare Commission including IWC Wage Order No. 5.
- 8. Jurisdiction is proper in this Court because alleged damages exceed Twenty-five Thousand Dollars (\$25,000.00). PLAINTIFF meets the requirements of C.C.P. § 382 to bring this action because, among other reasons, the question is one of common or general interest, is a question of many persons and/or the parties are numerous and it is impracticable to bring them all before the Court.
- 9. Venue is proper because DEFENDANTS' principal place of business is located within the county of San Francisco. PLAINTIFF worked for DEFENDANTS in the county of San Francisco.

III. PARTIES

- 10. PLAINTIFF is a competent individual who was formerly employed by DEFENDANTS as full-time or part-time employee who received hourly wages.
- 11. DEFENDANT BENIHANA NATIONAL CORP. is a Delaware corporation doing business in the State of California as Benihana.
- 12. DEFENDANT BENIHANA, INC. is a Delaware corporation doing business in the State of California as Benihana.

- 13. DEFENDANTS were joint employers of PLAINTIFF and other employees similarly situated during the relevant class claim period.
- 14. At all times herein mentioned DEFENDANTS and DOES 1 through 10, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. DEFENDANTS own and operate an industry, business and establishment throughout California. As such, and based upon all the facts and circumstances incident to DEFENDANTS' business in California, DEFENDANTS are subject to California laws that regulate the employment and working conditions of employees in California, including California Labor Code §§ 201-204, 223, 226.7, 510, 512, 1174, 1194, and 2699, California Business and Professions Code § 17200, et seq., (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare Commission including IWC Wage Order No. 5.
- 15. PLAINTIFF does not know the true names or capacities, whether individual, partner or corporate, of the DEFENDANTS sued herein as DOES 1 through 10, inclusive, and for that reason, said DEFENDANTS are sued under such fictitious names, and PLAINTIFF prays leave to amend this complaint when the true names and capacities are known.
- 16. PLAINTIFF is informed and believes and thereon alleges that each of said fictitious DEFENDANTS was responsible in some way for the matters alleged herein and proximately caused PLAINTIFF and members of the class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

IV. STATEMENT OF FACTS

- 17. DEFENDANTS own and operate Benihana in San Francisco, California.
- 18. PLAINTIFF was hired by DEFENDANTS from November 14, 2013 to March 28, 2019.
 PLAINTIFF worked for DEFENDANTS as a preparation cook.

- 19. The class period ("CLASS PERIOD") is four years from the filing of this action, through the entry of final judgment in this action.
 - 20. PLAINTIFF was a non-exempt hourly employee for DEFENDANTS.
- 21. During the course of his employment, PLAINTIFF worked for DEFENDANTS approximately five (5) to six (6) days per week.
- 22. During the course of his employment PLAINTIFF regularly worked on shifts that ranged from approximately five and half (5.5) to eight (8) hours per day.
- 23. Instructed by supervisors, PLAINTIFF and similarly situated current and former employees were required to arrive approximately ten (10) minutes before their scheduled shift to change into DEFENDANTS' uniform. At the end of their scheduled shift, PLAINTIFF and similarly situated current and former employees had to clock out before removing their uniform. It took PLAINTIFF and similarly situated current and former employees on average ten (10) minutes to remove their uniform and leave the restaurant. PLAINTIFF, and similarly situated current and former employees were not compensated for time spent changing into and out of their uniform. PLAINTIFF and similarly situated current and former employees were not allowed to take their uniforms home.
- 24. When PLAINTIFF and similarly situated current and former employees worked more than eight hours in one day and/or worked more than forty hours in one workweek DEFENDANTS failed to compensate PLAINTIFF, and similarly situated current and former employees for all their overtime hours accumulated due to off-the-clock time they spent dressing and undressing with DEEFENDANTS' uniform.
- 25. During the course of his employment, PLAINTIFF and similarly situated current and former employees worked for periods of more than four (4) hours without a rest period of ten (10) minutes. For instance, during PLAINTIFF was assigned tasks that consisted of a heavy workload that

he was required to finish, and therefore, he was expected to prioritize finishing his tasks over taking breaks.

- 26. PLAINTIFF, and similarly situated current and former employees, were not compensated one hour of their regular rate of pay for each time they are not provided rest breaks.
- 27. During the CLASS PERIOD, DEFENDANTS failed to establish and/or enforce a rest break policy.
- 28. DEFENDANTS did not have a payroll system and practice in place that compensates employees one (1) hour premium for denied or improper rest breaks.
- 29. DEFENDANTS have failed to deliver accurate itemized wage statements of all wages earned by PLAINTIFF, and similarly situated current and former employees. The wage statements are not accurate in that they do not reflect the required compensation for all hours and minutes worked and denied or improper rest breaks.
- 30. PLAINTIFF, and similarly situated current and former employees, were not able to ascertain if they were compensated for denied or improper and rest breaks.
- 31. PLAINTIFF, and similarly situated current and former employees, are owed waiting time penalties because upon their separation, they were not paid all the money and compensations owed to them including wages, overtime compensation, and rest period compensation.

V. CLASS ACTION ALLEGATIONS

32. PLAINTIFF brings this action on behalf of himself and a putative class of similarly situated employees pursuant to California Code of Civil Procedure § 382. The class is defined as: "All current and former hourly or non-exempt employee's of DEFENDANTS who worked in the State of California at any time from four years from the date of the filing of this action through the entry of final judgment in this action."

33. NUMEROSITY AND ASCERTAINABILITY: The members of the class are so numerous that joinder of all members would be impractical, if not impossible. PLAINTIFF is informed and believes that there are over one hundred (100) employees working for DEFENDANTS in California at any one time. The identity of putative class members is readily ascertainable by review of DEFENDANTS' records. Notice can be provided to DEFENDANTS' employees using techniques and a form of notice similar to those customarily used in class action lawsuits.

- 34. PLAINTIFF is informed, believes, and based thereon alleges that DEFENDANTS' employees are denied:
 - a) Compensation for overtime worked;
 - b) Compensation for all hours worked;
 - c) Missed or improper rest period compensation;
 - d) Accurate itemized wage statements; and
 - e) Waiting time penalties.
- 35. ADEQUACY OF REPRESENTATION: PLAINTIFF is member of the putative class. PLAINTIFF does not have any conflicts of interest with other putative class members and will prosecute the case vigorously on behalf of the putative class. PLAINTIFF will fairly and adequately represent and protect the interests of putative class members. PLAINTIFF'S counsel is competent and experienced in litigating wage and hour class actions.
- 36. SUPERIORITY OF CLASS ACTION: A class action is superior to all other available means of fair and efficient adjudication of this controversy. Individual joinder of all putative class members is not practicable, and questions of law and fact common to the putative class predominate over any questions affecting only individual members of the class. DEFENDANTS' employees have been damaged and are entitled to recovery by reason of DEFENDANTS' unlawful policies and/or practices described herein. Because the damages suffered by individual putative class members may be

relatively small, albeit significant, the expense and burden of individual litigation make it impractical for most putative class members to seek individual redress for the wrongful conduct alleged. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

- 37. The Labor Code and IWC Wage Order No. 5, are broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic conditions and bargaining power in setting onerous terms and conditions of employment.
- 38. The nature of this action and the format of laws available to PLAINTIFF and members of the putative class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate DEFENDANTS would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual PLAINTIFF with their vastly superior financial and legal resources. Requiring each putative class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.
- 39. The prosecution of separate actions by individual putative class members, even if possible, would create a substantial risk of: (a) Inconsistent or varying adjudications with respect to individual putative class members against the DEFENDANTS, which would establish potentially incompatible standards of conduct for the DEFENDANTS; and/or (b) Adjudications with respect to individual putative class members which would, as a practical matter, be dispositive of the interest of the other putative class members not parties to the adjudications, or which would substantially impair

or impede the ability of DEFENDANTS' aggrieved employees to protect their interests. Further, the claims of the individual members of the putative class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

- 40. **COMMON QUESTION OF LAW AND FACT:** There are questions of law and fact common to putative class members that predominate over any questions affecting only individual members of the class. These common questions of law and fact include:
 - 41. Whether DEFENDANTS have failed to pay employees wages for all overtime worked:
 - 42. Whether DEFENDANTS have failed to pay employees wages for all hours worked;
- 43. Whether DEFENDANTS have failed to provide compensation to employees who were not provided rest periods in accordance with applicable law;
- 44. Whether wage statements provided to DEFENDANTS' employees are adequate under applicable law, and whether employees are entitled to receive statutory penalties from DEFENDANTS for each wage statement violation committed;
- 45. Whether DEFENDANTS willfully failed to pay all wages due to DEFENDANTS' employees who were discharged or quit, and whether such employees are entitled to receive statutory penalties from DEFENDANTS for each violation committed; and
- 46. **TYPICALITY:** PLAINTIFF'S claims are typical to the claims of all members of the putative class. PLAINTIFF is member of the putative class and has suffered the alleged, class-wide violations described herein.

VI. <u>DAMAGES</u>

47. As a direct, foreseeable, and proximate result of DEFENDANTS' conduct, PLAINTIFF and similarly situated current and former employees are owed, among other things, payments for all hours worked, missed or improper rest periods plus interest, waiting time penalties under Labor Code §

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203, and other statutory penalties in an amount that exceeds \$25,000, the precise amount of which will be proven at trial.

FIRST CAUSE OF ACTION

(Unpaid Overtime Compensation)

- 48. PLAINTIFF realleges and incorporates the above allegations by reference.
- 49. Pursuant to the IWC Wage Order No. 5 and Cal. Labor Code §§ 500, 510, and 1194, PLAINTIFF and similarly situated current and former employee are owed overtime compensation for all overtime hours. DEFENDANTS were required to compensate PLAINTIFF, and similarly situated employees of DEFENDANTS, for all their overtime worked.
- 50. During the class CLAIM PERIOD, DEFENDANTS failed to compensate PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, for all overtime worked.
- 51. As a result of DEFENDANTS' unlawful time recording policy, PLAINTIFF and similarly situated current and former employees have been deprived overtime compensation in an amount determined at trial, and are entitled to recovery of such amounts, plus interest thereon, under Labor Code § 1194.
- PLAINTIFF, on behalf of himself and similarly situated current and former employees 52. of DEFENDANTS, requests reliefs as described below.

SECOND CAUSE OF ACTION

(Unpaid Wages)

- 53. PLAINTIFF realleges and incorporates the above allegations by reference.
- 54. Pursuant to Labor Code §§ 1194 and 1194.2 and IWC Wage Order No. 5, notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage for any work performed is entitled to recover the unpaid balance of the full amount of

this minimum wage, liquidated damages, including interest thereon, reasonable attorney's fees, and costs of suit.

- 55. DEFENDANTS have failed to pay PLAINTIFF and putative class members for all hours worked at least at minimum wage because of their unlawful rounding policy.
- 56. PLAINTIFF, on behalf of himself and other separated employees of DEFENDANTS, requests reliefs as described below

THIRD CAUSE OF ACTION

(Failure to Pay Compensation for Missed & Improper Rest Periods)

- 57. PLAINTIFF realleges and incorporates the above allegations by reference.
- 58. Pursuant to Labor Code § 226.7(a) and IWC Wage Order No. 5, DEFENDANTS are required to authorize and permit PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, the opportunity to take rest periods based upon total hours worked, at a rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof, with no deduction from wages.
- 59. DEFENDANTS failed and refused to authorize and permit PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof, in violation of Labor Code § 226.7(a) and IWC Wage Order No. 5.
- 60. DEFENDANTS have violated Labor Code § 226.7 and IWC Wage Order No. 5, by failing to pay PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, one (1) hour of pay at their regular rate of pay for each work day rest periods were required but not provided.
- 61. PLAINTIFF, on behalf of himself and similarly situated current and former employees of DEFENDANTS, requests reliefs as described below.

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FOURTH CAUSE OF ACTION

(Failure to Provide Accurate/Itemized Wage Statements)

- 62. PLAINTIFF realleges and incorporates the above allegations by reference.
- 63. As a pattern and practice, DEFENDANTS failed to furnish PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, an accurate itemized statement in writing showing all gross wages earned, including the premium compensation for any denied rest breaks at the applicable hourly rates of PLAINTIFF, and similarly situated current and former employees of DEFENDANTS.
- 64. The wage statements are not accurate in that they do not reflect all actual hours worked, including all overtime hours worked. The wage statements do not reflect the required compensation for missed or improper rest periods.
- 65. As such, PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, are entitled to payment from DEFENDANTS of the greater of actual damages or \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each subsequent violation, up to a maximum of \$4000.00, pursuant to Labor Code § 226, as well as reasonable attorney's fees and costs of suit.
- 66. PLAINTIFF, on behalf of himself and similarly situated current and former employees of DEFENDANTS, requests reliefs as described below.

FIFTH CAUSE OF ACTION

(Labor Code §§ 201-203- Waiting Time Penalties)

- 67. PLAINTIFF realleges and incorporates by reference the paragraphs above paragraphs.
- 68. California Labor Code § 201 requires an employer who discharges an employee to pay all compensation due to that employee immediately upon discharge.

- 69. California Labor Code § 202 requires an employer to pay all compensation due to employees who quit within 72 hours of that employee quitting, unless the employee provides at least 72 hours' notice of quitting, in which case all compensation is due at the end of the employee's final day of work.
- 70. Labor Code § 203 provides that if an employer willfully fails to pay compensation as required by § 201 or § 202, then the employer is liable for waiting time penalties in the form of continued compensation of up to 30 work days.
- 71. DEFENDANTS willfully failed and refused to timely pay compensation and wages, including unpaid wages and overtime compensation, to PLAINTIFF, and other separated employees of DEFENDANTS, at the end of their employment.
- 72. As a result, DEFENDANTS are liable to PLAINTIFF, and other separated employees of DEFENDANTS, for waiting time penalties, together with interest thereon, under Labor Code § 203.
- 73. PLAINTIFF, on behalf of himself and other separated employees of DEFENDANTS, requests reliefs as described below.

SIXTH CAUSE OF ACTION

(Civil Penalties Pursuant to Private Attorney General Act)

- 74. PLAINTIFF realleges and incorporates the above allegations by reference.
- 75. Pursuant the foregoing violations of statutes and regulations permit PLAINTIFF to recover civil penalties through this action. The PAGA imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred (\$200) per pay period per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

- 76. DEFENDANTS' violations of California wage and hour laws enable PLAINTIFF to recover civil penalties as aggrieved employee on behalf of himself and other current and former employees of DEFENDANTS.
- 77. PLAINTIFF has complied with the procedural requirements specified in Labor Code §2699.3. PLAINTIFF has therefore exhausted all administrative procedures required under Labor Code §§2698, 2699 and 2699.3, and are justified as a matter of right in bringing forward this cause of action.
- 78. On July 17, 2019, PLAINTIFF, through counsel, pursuant to the PAGA, sent via certified mail a letter-notice of violations to the LWDA, as required by Labor Code §2699.3. A copy of this letter-notice is attached to this Complaint as Exhibit "A."
- 79. Sixty-five (65) calendar days have passed since the postmark date of PLAINTIFF'S notices and the LWDA has not notified PLAINTIFF'S counsel that it does not intend to investigate the allegations. Pursuant to Labor Code §2699.3 (a)(2)(A), PLAINTIFF may commence a civil action pursuant to Labor Code §2699.
- 80. As a result of DEFENDANTS' violation of numerous provisions of the Labor Code, PLAINTIFF seeks all civil penalties, reasonable attorney's fees and costs available pursuant to Labor Code §2699.
- 81. PLAINTIFF is likely to have evidentiary support, after research and reasonable opportunity for further investigation and discovery, to further prove penalties and violations. PLAINTIFF will amend this complaint if appropriate and required to seek all applicable penalties for violations which the LWDA has failed to investigate and/or failed to issue a citation.
- 82. Pursuant to Labor Code §2699(i), PLAINTIFF, as aggrieved employee on behalf of himself and other current and former employees of DEFENDANTS, should be awarded twenty-five

percent (25%) of all penalties due under California law, interest, attorneys' fees and costs. The LWDA should be awarded seventy-five percent (75%) of the penalties due and awarded.

SEVENTH CAUSE OF ACTION

(Business and Professions Code § 17200 et seq. violations.)

- 83. California Business and Professions Code § 17200 et. seq. prohibits acts of unfair competition including any "unlawful and unfair business practices."
- 84. The conduct of DEFENDANTS, as alleged herein, has been and continues to be unfair, unlawful, and deleterious to PLAINTIFF and similarly situated current and former employees, and to the general public.
- 85. PLAINTIFF hereby seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5. PLAINTIFF is a "person" within the meaning of Business and Professions Code § 17204 and therefore have standing to bring this suit for injunctive relief and restitution.
- 86. The prompt and proper payment of wages is a fundamental public policy of the State of California. It is also the public policy of the State to enforce minimum labor standards ensuring that employees are not required or permitted to work under substandard and unlawful conditions and to protect those employers who comply with the law from losing competitive advantage to other employers that fail to comply with labor standards and requirements.
- 87. Through the conduct alleged herein, DEFENDANTS acted contrary to these public policies and have thus engaged in unlawful and/or unfair business practices in violation of Business and Professions Code §§ 17200 et. seq. depriving PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, the rights, benefits, and privileges guaranteed to employees under California law.

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- 88. Beginning at an exact date unknown to PLAINTIFF, but at least four years prior to the filing of this action, DEFENDANTS have committed unlawful, unfair, and/or fraudulent business acts and practices as defined by Cal. Business & Professions Code § 17200, by engaging in the following:
 - Failing to pay all overtime worked, to PLAINTIFF, and similarly situated current and former employees of DEFENDANTS;
 - Failing to pay all hours worked, to PLAINTIFF, and similarly situated current and former employees of DEFENDANTS;
 - Failing and refusing to authorize and permit proper rest breaks to PLAINTIFF, and similarly situated current and former employees of DEFENDANTS;
 - d) Failing to pay all accrued rest break compensation to PLAINTIFF, and similarly situated current and former employees of DEFENDANTS;
 - e) Failing to provide accurate itemized wage statements to PLAINTIFF, and similarly situated current and former employees of DEFENDANTS;
 - f) Failing to pay all wages owed to PLAINTIFF, and similarly situated current and former employees of DEFENDANTS, at the end of their employment; and
- 89. By engaging in these business practices, which are unfair and unlawful within the meaning of Business and Professions Code §§ 17200 et. seq., DEFENDANTS harm PLAINTIFF, similarly situated current and former employees of DEFENDANTS, and the general public, and have gained an unfair competitive edge.
- 90. Under Business and Professions Code § 17203, PLAINTIFF is entitled to obtain restitution on behalf of himself and others similarly affected by the unfair and/or unlawful business practices as set forth herein.
- 91. Pursuant to Business and Professions Code § 17202, PLAINTIFF is entitled to specific reliefs enforcing the penalty provisions of various Labor Code sections for himself and for members of

the general public in amounts to be proven at trial. Failure to enforce the penalties due would result in the unlawful enrichment of DEFENDANTS and would promote unfair competition.

- 92. Pursuant to Business & Professions Code § 17203, injunctive relief is necessary to prevent DEFENDANTS from continuing to engage in the unfair business practices as alleged herein.
- 93. PLAINTIFF alleges, on information and beliefs, that DEFENDANTS, and persons acting in concert with them, have committed and will continue to commit the above-described unlawful and/or unfair acts unless restrained or enjoined by this Court. Unless the relief prayed for below is granted, a multiplicity of actions will result. PLAINTIFF and other interested persons have no plain, speedy, or adequate remedy at law, in that pecuniary compensation alone would not afford adequate and complete relief. The above-described acts will cause great and irreparable damage to PLAINTIFF and other interested persons unless DEFENDANTS are restrained from committing further illegal acts.
- 94. PLAINTIFF' success in this action will result in the enforcement of important rights affecting the public and will confer a significant benefit upon the general public. Private enforcement of the rights enumerated in this Complaint are necessary, as public agencies have only sought limited enforcement of those rights, if any. The named PLAINTIFF individually, and by and through counsel, is incurring a financial burden in pursuing this action on behalf of the general public. PLAINTIFF seeks to enjoin the above-referenced unlawful actions under California's Labor Code Industrial Welfare Commission Wage Orders. Therefore, PLAINTIFF seeks an award of attorneys' fees and costs of suit on this action pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws.

VII. PRAYER

WHEREFORE, PLAINTIFF on his own behalf and on the behalf of the members of the class, prays for judgment as follows:

- For an order certifying the proposed class;
- 2. For compensatory and consequential damages;

- 3. Prejudgment interest pursuant to Labor Code § 218.6 accrued on all due and unpaid wages from the date that wages were due and payable, according to proof;
- 4. Pursuant to IWC Wage Order No. 5, and Labor Code §§ 204, and 1194(a), an award in the

amount of unpaid wages, owed by DEFENDANTS for the four years preceding the filing of this complaint, plus interest.

- 5. Compensation of one hour at the regular rate of pay for each rest period denied in violation of Labor Code § 226.7 and IWC Wage Order No. 5, according to proof;
- 6. Waiting time penalties pursuant to Labor Code §§ 201-203;
- 7. Pursuant to Business & Professions Code § 17203, an award of restitution for the unjustly amounts earned or retained DEFENDANTS by virtue of their engaging in unlawful conduct, according to proof;
- 8. For civil penalties provided for in Labor Code § 1199 for violation IWC Wage Order No. 5. §13 (A);
- 9. An award of twenty-five percent (25%) of all penalties due under California law, interest, attorneys' fees and costs to PLAINTIFF as aggrieved employee on behalf of himself and other current and former employees of DEFENDANTS, pursuant to Labor Code §2699(i) and an award of seventy-five percent (75%) of the penalties in favor of the LWDA; and
- 10. Such other and further relief as the Court deems just and proper.

Dated: February 4, 2020 LIBERATION LAW GROUP, P.C. 2 By: 3 Arlo Garcia Uriarte 4 Un Kei Wu Attorneys for PLAINTIFF 5 6 VIII. DEMAND FOR JURY TRIAL 7 PLAINTIFF hereby demands a trial by jury. 8 9 DATED: February 4, 2020 LIBERATION LAW GROUP, P.C. 10 11 By: Arlo Garcia Uriarte 12 Un Kei Wu 13 Attorneys for PLAINTIFF 14 15 16 17 18 19 20 22 23 24 25 26 28 19

EXHIBIT A

Attorneys: Arlo García Uriarte Un Kei Wu Ernesto Sánchez Daniel P. Iannitelli Nick Aguilar, Adm. in Fla.



Legal Assistants:
Andrea Ortiz
Andrea Cruz
Ivette Olguin
Vicent Uriarte
Crystina Arreola-Nunez
Mariana Toledo Segarra

2760 Mission Street · San Francisco, CA 94110 · 415 695-1000

July 17, 2019

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency Attn. PAGA Administrator 455 Golden Gate Avenue, 9th Floor San Francisco, CA 94102

Re:

Salvador Rosales v Benihana National Corp and Benihana, Inc.

Notice of Violations

Dear PAGA Administrator:

Pursuant to the Private Attorneys General Act of 2004, attached is a list of violations relevant to this action. Further investigation and discovery may result in shedding light to further violations. Please consider this letter and the attached as the notice required by California Labor Code Section 2699.3.

Pursuant to Labor Code 2699(a), Plaintiff Salvador Rosales hereby apply to recover through civil action on behalf of himself and other current and former aggrieved employees.

Very truly yours,

LIBERATION LAW GROUP, P.C.

Arlo Uriarte

w/enclosures

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Liberation Law Group P.C. Rosales Notice of Violations July 17, 2019

Benihana National Corp. and Benihana, Inc.

Labor Code 2699 Notice of Violations

On or about November 14, 2013, Salvador Rosales started to work for Benihana National Corp, Inc. (hereinafter "Defendant"). He worked at the Benihana restaurant located in San Francisco, California. Mr. Rosales worked approximately six days a week as a preparation cook. His supervisors were Jeff (last name unknown) or Virginia (last name unknown).

Instructed by his supervisors, Mr. Rosales was required to arrive approximately ten (10) minutes before his scheduled shift time to change into an uniform, which consisted of a shirt with the restaurant logo, apron and chef hat. At the end of Mr. Rosales's scheduled shift, Mr. Rosales had to clock out before removing his uniform. It took Mr. Rosales on average ten (10) minutes to remove his uniform and leave the restaurant. Mr. Rosales was not compensated for time spent change into and out of his uniform.

Mr. Rosales worked more than eight hours in one day and/or worked more than forty hours in one workweek and Defendant failed to compensate Mr. Rosales overtime pay for his overtime hours.

Sometimes, Mr. Rosales worked seven straight days in one workweek. Defendant failed to compensate Mr. Rosales at his corresponding overtime rate for the first eight hours of work on the seventh consecutive day of the workweek.

Defendant has no policy or practice to provide its employees with rest breaks. During the course of Mr. Rosales' employment, Defendants failed and refused to authorize and permit Mr. Rosales to take 10-minute rest periods for every four hours worked, or major fraction thereof.

Defendant never paid Mr. Rosales one hour of pay at his regular rate of pay for each work day rest breaks were required but not provided.

Defendant failed to provide Mr. Rosales accurate itemized wage statements. the wage statement of Mr. Rosales failed to reflect the rest break premium pay Mr. Rosales was owed.

In or around March 29, 2019, Defendant terminated the employment of Mr. Rosales. Defendant failed to pay all wages due to Mr. Rosales upon his termination.

Mr. Rosales is informed and believes that other current and former aggrieved employees of Defendant were subjected to the same wage and hour violations as Mr. Rosales noted herein. Pursuant to Labor Code § 2698, Mr. Rosales, on behalf of himself and all current and former aggrieved employees of Defendant, seek to recover civil penalties against Defendant for Labor Code violations pursuant to, but not limited to:

Liberation Law Group P.C. Rosales Notice of Violations July 17, 2019

Defendants failed to pay Mr. Rosales for all hours worked in violation of Labor Code §§ 1194 and 1197. Defendants violated section 4 of the Industrial Welfare Commission Wage Order 5 by failing to pay Mr. Rosales all hours worked at least at the minimum wage rate.

Violations to Labor Code § 1194 - penalties pursuant to Labor Code §2699(f); violation to Labor Code § 1197 - penalties pursuant to Labor Code §§ 1197.1, 558, and 2699(f); violations to Wage Order 5 section 4 - penalties pursuant to § 20 of Wage Order 5.

By requiring Mr. Rosales to work overtime and not properly compensating him for overtime hours worked, Defendant violated Labor Code §§ 510 and 1194, and section 3 of the Industrial Welfare Commission Wage Order 5 by failing to pay Plaintiff for all overtime hours worked at one and one half times his regular rate of pay.

Violations to Labor Code § 510 – penalties pursuant to Labor Code §§ 558 and 2699(f); violations to Labor Code § 1194 - penalties pursuant to Labor Code §2699(f); violations to Wage Order 5 section 3 – penalties pursuant to § 20 of Wage Order 5.

Defendant violated Labor Code §§ 226.7(a) and 512, and section 12 of the Industrial Welfare Commission Wage Order 5, by failing to authorize and provide Mr. Rosales with proper rest breaks and then failing to provide Mr. Rosales the required one-hour compensation when rest breaks are not properly provided.

Violations to Labor Code § 226.7(a) - penalties pursuant to § 2699(f); violations to Labor Code § 512 - penalties pursuant to §§ 558 and 2699(f); violations to section 12 of IWC Order 5 - penalties pursuant to § 20 of IWC Order 5.

Defendant violated Labor Code § 226(a) and Wage Order 5 section 7 by failing to provide Mr. Rosales with accurate itemized wage that informed the premium penalties for improper rest periods.

Violations to Labor Code § 226(a) – penalties pursuant to §§ 226(e), 226.3, and 2699(f); violations to IWC Order 5 section 7 – penalties pursuant to § 20 of IWC Order

Defendant violated Labor Code §§ 201 through 203 by failing to pay Mr. Rosales all wages and compensation owed within 72 hours of his separation date.

Violations to Labor Code §§ 201 through 203 - penalties pursuant to Labor Code section 2699(f).

Case 3:20-cv-03903-LB Document 1 Filed 06/12/20 Page 62 of 96 CASE NUMBER: CGC-20-582696 SALVADOR ROSALES VS. BENIHANA NATIONAL CORP. E

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE:

JUL-08-2020

TIME:

10:30AM

PLACE:

Department 610

400 McAllister Street

San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. This case is eligible for electronic filing and service per Local Rule 2.11. For more information, please visit the Court's website at www.sfsuperiorcourt.org under Online Services.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

ALTERNATIVE DISPUTE RESOLUTION REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE SHOULD PARTICIPATE IN MEDIATION, ARBITRATION, NEUTRAL EVALUATION, AN EARLY SETTLEMENT CONFERENCE, OR OTHER APPROPRIATE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.

(SEE LOCAL RULE 4)

Plaintiff <u>must</u> serve a copy of the Alternative Dispute Resolution (ADR) Information Package on each defendant along with the complaint. (CRC 3.221.) The ADR package may be accessed at www.sfsuperiorcourt.org/divisions/civil/dispute-resolution or you may request a paper copy from the filing clerk. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the ADR Information Package prior to filing the Case Management Statement.

Superior Court Alternative Dispute Resolution Administrator 400 McAllister Street, Room 103-A San Francisco, CA 94102 (415) 551-3869

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.



Superior Court of California, County of San Francisco Alternative Dispute Resolution Information Package



The plaintiff must serve a copy of the ADR Information Package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR Information Package on any new parties to the action together with the cross-complaint. (CRC 3.221(c).)

WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to trial.

WHY CHOOSE ADR?

It is the policy of the Superior Court that every long cause, non-criminal, non-juvenile case should participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial. (Local Rule 4.)

ADR can have a number of advantages over traditional litigation:

- ADR can save time. A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- ADR can save money, including court costs, attorney fees, and expert fees.
- ADR encourages participation. The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- ADR is more satisfying. For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

Electing to participate in an ADR process does not stop the time period to respond to a complaint or cross-complaint

WHAT ARE THE ADR OPTIONS?

The San Francisco Superior Court offers different types of ADR processes for general civil matters. The programs are described below:

1) MANDATORY SETTLEMENT CONFERENCES

Settlement conferences are appropriate in any case where settlement is an option. The goal of settlement conferences is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute. Mandatory settlement conferences are ordered by the court and are often held near the date a case is set for trial, although they may be held earlier if appropriate. A party may elect to apply to the Presiding Judge for a specially set mandatory settlement conference by filing an ex parte application. See Local Rule 5.0 for further instructions. Upon approval by the Presiding Judge, the court will schedule the conference and assign a settlement conference officer.

ADR-1 10/18 Page | 1

2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law.

- (A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO (BASF), in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending. Experienced professional mediators work with parties to arrive at a mutually agreeable solution. The mediators provide one hour of preparation time and the first two hours of mediation time. Mediation time beyond that is charged at the mediator's hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties can select their mediator from the panels at www.sfbar.org/mediation or BASF can assist with mediator selection. BASF staff handles conflict checks and full case management. The success rate for the program is 67% and the satisfaction rate is 99%. BASF charges an administrative fee of \$295 per party. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waivers of the fee are available to those who qualify. For more information, call 415-982-1600 or email adr@sfbar.org.
- (B) JUDICIAL MEDIATION PROGRAM provides mediation with a San Francisco Superior Court judge for civil cases, which include but are not limited to, personal injury, construction defect, employment, professional malpractice, insurance coverage, toxic torts and industrial accidents. Parties may utilize this program at any time throughout the litigation process. Parties interested in judicial mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court will coordinate assignment of cases for the program. There is no charge. Information about the Judicial Mediation Program may be found by visiting the ADR page on the court's website: www.sfsuperiorcourt.org/divisions/civil/dispute-resolution
- (C) PRIVATE MEDIATION: Although not currently a part of the court's ADR program, parties may select any private mediator of their choice. The selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.
- (D) COMMUNITY BOARDS MEDIATION SERVICES: Mediation services are offered by Community Boards (CB), a nonprofit resolution center, under the Dispute Resolution Programs Act. CB utilizes a three-person panel mediation process in which mediators work as a team to assist the parties in reaching a shared solution. To the extent possible, mediators are selected to reflect the demographics of the disputants. CB has a success rate of 85% for parties reaching a resolution and a consumer satisfaction rate of 99%. The fee is \$45-\$100 to open a case, and an hourly rate of \$180 for complex cases. Reduction and waiver of the fee are available. For more information, call 415-920-3820 or visit communityboards.org.

ADR-1 10/18 Page | 2

3) ARBITRATION

An arbitrator is a neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

(A) JUDICIAL ARBITRATION

When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial. Pursuant to CCP 1141.11, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) An arbitrator is chosen from the court's arbitration panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 60 days after the arbitrator's award has been filed. Local Rule 4.1 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after being assigned to judicial arbitration. There is no cost to the parties for judicial arbitration.

(B) PRIVATE ARBITRATION

Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's or court-affiliated ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet and available on the court's website); or
- Indicating your ADR preferences on the Case Management Statement (available on the court's website); or
- Contacting the court's ADR Department (see below), the Bar Association of San Francisco's ADR Services, or Community Boards.

For more information about ADR programs or dispute resolution alternatives, contact:

Superior Court Alternative Dispute Resolution 400 McAllister Street, Room 103-A, San Francisco, CA 94102 415-551-3869

Or, visit the court's ADR page at www.sfsuperiorcourt.org/divisions/civil/dispute-resolution

TO PARTICIPATE IN ANY OF THE COURT'S ADR PROGRAMS, PLEASE COMPLETE AND FILE THE ATTACHED STIPULATION TO ADR AND SUBMIT IT TO THE COURT. YOU MUST ALSO CONTACT BASE OR COMMUNITY BOARDS TO ENROLL IN THEIR LISTED PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF STIPULATIONS TO BASE OR COMMUNITY BOARDS.

ADR-1 10/18

Case 3:20-cv-03903-LB Document 1 Filed 06/12/20 Page 66 of 96 ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address) FOR COURT USE ONLY TELEPHONE NO .: ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514 PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR) CASE NUMBER: **DEPARTMENT 610** The parties hereby stipulate that this action shall be submitted to the following ADR process: 1) Mediation Services of the Bar Association of San Francisco (BASF) - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$295 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. www.sfbar.org/mediation Mediation Services of Community Boards (CB) - Service in conjunction with DRPA, CB provides case development and one three-hour mediation session. Additional sessions may be scheduled. The cost is \$45-\$100 to open a case, and an hourly rate of \$180 for complex cases. Reduction and waiver of the fee are available to those who qualify. communityboards.org Private Mediation - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet. Judicial Arbitration - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. www.sfsuperiorcourt.org/divisions/civil/dispute-resolution Judicial Mediation - The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. There is no fee for this program. www.sfsuperiorcourt.org/divisions/civil/dispute-resolution Judge Requested (see list of Judges currently participating in the program): Date range requested for Judicial Mediation (from the filing of stipulation to Judicial Mediation): ☐ 30-90 days ☐ 90-120 days ☐ Other (please specify) Other ADR process (describe) The parties agree that the ADR Process shall be completed by (date): ___ Plaintiff(s) and Defendant(s) further agree as follows: Name of Party Stipulating Name of Party Stipulating

Name of Party Stipulating

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant ☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: _____

☐ Additional signature(s) attached



Superior Court of California County of San Francisco



HON. TERI L. JACKSON PRESIDING JUDGE

Judicial Mediation Program

ELIZABETH M. KELBER
ADR ADMINISTRATOR

The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to personal injury, professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial Mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable Suzanne R. Bolanos The Honorable Angela Bradstreet The Honorable Andrew Y.S. Cheng The Honorable Curtis E.A. Karnow The Honorable Charlene P. Kiesselbach

The Honorable Anne-Christine Massullo The Honorable James Robertson, II The Honorable John K. Stewart The Honorable Richard B. Ulmer, Jr. The Honorable Mary E. Wiss

Parties interested in Judicial Mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program and deliver a courtesy copy to Department 610. A preference for a specific judge may be indicated on the request, and although not guaranteed due to the judge's availability, every effort will be made to fulfill the parties' choice for a particular judge. Please allow at least 30 days from the filing of the form to receive the notice of assignment. The court's Alternative Dispute Resolution Administrator will facilitate assignment of cases that qualify for the program.

Note: Space and availability is limited. Submission of a stipulation to Judicial Mediation does *not* guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Alternative Dispute Resolution 400 McAllister Street, Room 103-A, San Francisco, CA 94102 (415) 551-3869

ATTORNE	EY OR PARTY WITHOUT ATTORNEY (Name and address)		50p		
		FOR COURT USE ONLY			
TELEPHONE NO.: ATTORNEY FOR (Name):					
	R COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO		-		
	ister Street isco, CA 94102-4514				
PLAINTIF	F/PETITIONER:				
DEFENDANT/RESPONDENT:					
	STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADD	₹)	CASE NUMBER:		
			DEPARTMENT 610		
1) Th	ne parties hereby stipulate that this action shall be subn				
_	Mediation Services of the Bar Association of San Francisco (BASF) - Experienced professional mediators, screene and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee \$295 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee a available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management www.sfbar.org/mediation				
	Mediation Services of Community Boards (CB) – Service three-hour mediation session. Additional sessions may be sof \$180 for complex cases. Reduction and waiver of the fee are	cost is \$45-\$100 to open a case, and an hourly rate			
	Private Mediation - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.				
	Judicial Arbitration - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. www.sfsuperiorcourt.org/divisions/civil/dispute-resolution				
	Judicial Mediation - The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superio Court judge familiar with the area of the law that is the subject of the controversy. There is no fee for this program www.sfsuperiorcourt.org/divisions/civil/dispute-resolution				
	Judge Requested (see list of Judges currently participating in t	the program):			
	Date range requested for Judicial Mediation (from the filing of stipulation to Judicial Mediation): 30-90 days 90-120 days Other (please specify)				
	Other ADR process (describe)				
2) Th					
2) The parties agree that the ADR Process shall be completed by (date): 3) Plaintiff(s) and Defendant(s) further agree as follows:					
Name of Party Stipulating Name of P		Name of Party	Stipulating		
Name of Party or Attorney Executing Stipulation Name		Name of Party	or Attorney Executing Stipulation		
Signature of Party or Attorney Signature		Signature of P	arty or Attorney		
☐ Plaintiff ☐ Defendant ☐ Cross-defendant		☐ Plaintiff	iff Defendant Cross-defendant		
Dated:					
□ Additional signature(s) attached					

	POS-010
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Arlo Garcia Uriarte, SBN 231764	FOR COURT USE ONLY
Un Kei Wu, SBN 270058	
Liberation Law Group, P.C. 2760 Mission St., San Francisco, CA 94110	
TELEPHONE NO.: 415-695-1000 FAX NO. (Optional): 415-695-1006	
E-MAIL ADDRESS (Optional):	ELECTRONICALLY
ATTORNEY FOR (Name): Plaintiff Salvador Rosales	FILED
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister St.	Superior Court of California, County of San Francisco
MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102	05/21/2020
BRANCH NAME:	Clerk of the Court BY: MADONNA CARANTO
PLAINTIFF/PETITIONER: Salvador Rosales, et al.	Deputy Clerk
PLAINTIFF/PETHONER: Salvador Rosales, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: Benihana National Corp., et al.	CGC-20-582696
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.;
(Separate proof of service is required for each party se	erved.)
1. At the time of service I was at least 18 years of age and not a party to this action.	
2. I served copies of:	
a. v summons	
b. v complaint	
c. Alternative Dispute Resolution (ADR) package	
d. Civil Case Cover Sheet (served in complex cases only)	
e. cross-complaint	
f. other (specify documents): Notice to Plaintiff re: Case Managemen	nt Conference
a. Party served (specify name of party as shown on documents served): BENIHANA INC.	
BENITIANA INC.	
 Person (other than the party in item 3a) served on behalf of an entity or as an under item 5b on whom substituted service was made) (specify name and relative 	ationship to the party named in item 3a):
Adriana Euribe, employee for Registered Agent for Service of P	rocess, authorized to accept.
Address where the party was served:	
Corporate Creations Network, Inc., 21500 Biscayne Boulevard, Suite 90 5. I served the party (check proper box)	00, Aventura, FL 33180
by many and coming. I provide the delivered the desuments listed in item 2	to the party or person authorized to
receive service of process for the party (1) on <i>(date)</i> : 05/13/2020	(2) at (time): 11:00 AM
	left the documents listed in item 2 with or
in the presence of (name and title or relationship to person indicated in item	3):
(1) (business) a person at least 18 years of age apparently in charge of the person to be served. I informed him or her of the general new part of t	•
(2) (home) a competent member of the household (at least 18 years place of abode of the party. I informed him or her of the general	
(3) (physical address unknown) a person at least 18 years of age address of the person to be served, other than a United States F him or her of the general nature of the papers.	
(4) I thereafter mailed (by first-class, postage prepaid) copies of the at the place where the copies were left (Code Civ. Proc., § 415.2 (date): from (city): or	
(5) I attach a declaration of diligence stating actions taken first to	attempt personal service.

PLAINTIFF/PETITIONER: Salvador Rosales, et al.	CASE NUMBER:					
DEFENDANT/RESPONDENT: Benihana National Corp., et al.	CGC-20-582696					
DEFENDANT/RESPONDENT: Beninana National Corp., et al.						
c. by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,						
(1) on (date):	(2) from (city):					
to me. (Attach completed Notice and Acknowledge)	 (3) with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.) (4) an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.) 					
d. by other means (specify means of service and authority)	izing code section):					
Additional page describing service is attached.						
 The "Notice to the Person Served" (on the summons) was completed. as an individual defendant. 						
b. as the person sued under the fictitious name of (specif	ý):					
c. as occupant.						
d. On behalf of (specify): BENIHANA INC.						
under the following Code of Civil Procedure section: 416.10 (corporation)	415.95 (business organization, form unknown)					
416.10 (corporation)	416.60 (minor)					
416.30 (joint stock company/association)						
416.40 (association or partnership)	416.90 (authorized person)					
416.50 (public entity)	415.46 (occupant)					
7. Person who served papers	other:					
7. Person who served papers a. Name: Danny Mendez, Badge 1265, Miami-Dade C	0.					
b. Address: c/o Western Attorney Services, 75 Columb						
c. Telephone number: 415-487-4140						
d. The fee for service was: \$						
e. I am:						
(1) not a registered California process server.						
(3) a registered California process server:						
	ndent contractor.					
(ii) Registration No.:						
(iii) County:						
8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.						
9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.						
Date: 05/15/2020						
VU, 10/2000	. () \					
Danny Mendez						
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)	(SIGNATURE)					

POS-010 ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address). Arlo Garcia Uriarte, SBN 231764 FOR COURT USE ONLY Un Kei Wu, SBN 270058 **ELECTRONICALLY** Liberation Law Group, P.C. FILED 2760 Mission St., San Francisco, CA 94110 TELEPHONE NO.: 415-695-1000 FAX NO. (Optional): 415-695-1006 Superior Court of California, County of San Francisco E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff Salvador Rosales 05/21/2020 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister St. Clerk of the Court BY: MADONNA CARANTO **Deputy Clerk** MAILING ADDRESS CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: PLAINTIFF/PETITIONER: Salvador Rosales, et al. CASE NUMBER: CGC-20-582696 DEFENDANT/RESPONDENT: Benihana National Corp., et al. Ref. No. or File No.: PROOF OF SERVICE OF SUMMONS (Separate proof of service is required for each party served.) At the time of service I was at least 18 years of age and not a party to this action. I served copies of: 1 summons b. 1 complaint Alternative Dispute Resolution (ADR) package C. Civil Case Cover Sheet (served in complex cases only) d. cross-complaint e. other (specify documents): Notice to Plaintiff re: Case Management Conference f. ~ a. Party served (specify name of party as shown on documents served): BENIHANA NATIONAL CORP. b. 🗸 Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a): Adriana Euribe, employee for Registered Agent for Service of Process, authorized to accept. Address where the party was served: Corporate Creations Network, Inc., 21500 Biscayne Boulevard, Suite 900, Aventura, FL 33180 I served the party (check proper box) by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 05/13/2020(2) at (time): 11:00 AM by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3): (business) a person at least 18 years of age apparently in charge at the office or usual place of business (1)of the person to be served. I informed him or her of the general nature of the papers. (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers. (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing (3) address of the person to be served, other than a United States Postal Service post office box. I informed

Page 1 of 2

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(date):

I attach a declaration of diligence stating actions taken first to attempt personal service.

I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on

him or her of the general nature of the papers.

from (city):

a declaration of mailing is attached.

PLAINTIFF/PETITIONER: Salvador Rosales, et al.	CASE NUMBER:					
DEFENDANT/RESPONDENT: Benihana National Corp., et al.	CGC-20-582696					
5. c. by mail and acknowledgment of receipt of service. I address shown in item 4, by first-class mail, postage pre-	mailed the documents listed in item 2 to the party, to the epaid,					
(1) on (date):	(2) from (city):					
to me. (Attach completed Notice and Acknow	to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)					
d. by other means (specify means of service and authorize	zing code section):					
Additional page describing service is attached.						
The "Notice to the Person Served" (on the summons) was completed as follows: a as an individual defendant.						
c. as occupant. d. On behalf of (specify): BENIHANA NATIONAL						
under the following Code of Civil Procedure section:	, cold .					
416.10 (corporation)	415.95 (business organization, form unknown)					
416.20 (defunct corporation)416.30 (joint stock company/association)	416.60 (minor) 416.70 (ward or conservatee)					
416.40 (association or partnership)	416.70 (ward of conservates) 416.90 (authorized person)					
416.50 (public entity)	415.46 (occupant) other:					
 Person who served papers a. Name: Danny Mendez, Badge 1265, Miami-Dade Co 						
b. Address: c/o Western Attorney Services, 75 Columbia						
c. Telephone number: 415-487-4140						
d. The fee for service was: \$						
e. I am:						
 (1) v not a registered California process server. (2) exempt from registration under Business and Professions Code section 22350(b). (3) a registered California process server: 						
(i) owner employee indeper (ii) Registration No.: (iii) County:	ndent contractor.					
8. I declare under penalty of perjury under the laws of the Star	te of California that the foregoing is true and correct.					
or						
9. I am a California sheriff or marshal and I certify that the f	oregoing is true and correct.					
Date: 05/15/2020	1.					
Danny Mendez (NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)	(SIGNATURE)					

Exhibit C

1 2	CONSTANCE E. NORTON, Bar No. 14636: LITTLER MENDELSON, P.C. 333 Bush Street, 34th Floor San Francisco, CA 94104	5
3 4	Telephone: (415) 433-1940 Facsimile: (415) 399-8490 Email: cnorton@littler.com	
56789	CHAD D. GREESON, Bar No. 251928 LITTLER MENDELSON, P.C. Treat Towers, Suite 600 1255 Treat Boulevard Walnut Creek, CA 94597 Telephone: (925) 932-2468 Facsimile: (925) 946-9809 Email: cgreeson@littler.com	
10 11	Attorneys for Defendants BENIHANA NATIONAL CORP. and BENIHANA INC.	
12	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
13	CITY AND COUNTY OF SAN FRANCISCO	
14		
15 16	SALVADOR ROSALES, on behalf of himself, on behalf of others similarly situated and the general public,	CASE NO. CGC-20-582696
17	Plaintiff,	ANSWER OF DEFENDANTS BENIHANA NATIONAL CORP AND BENIHANA INC.
18	VS.	TO PLAINTIFF'S UNVERIFIED COMPLAINT
19 20	BENIHANA NATIONAL CORP., BENIHANA, INC. and DOES 1 through 10, inclusive,	ASSIGNED FOR ALL PURPOSES TO JUDGE GARRETT L. WONG, DEPT. 610
21	Defendants.	Trial Date: TBD Complaint Filed: February 4, 2020
22		Complaint Fried. Teordary 4, 2020
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LITTLER MENDELSON, P.C.
333 Bush Street
34th Floor
San Francisco, CA, 94104
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LITTLER MENDELSON, P.C. 333 Bush Street 34th Floor San Francisco, CA 94104 415.433.1940 Defendants Benihana National Corp. and Benihana Inc. (collectively referred to herein as "Defendants¹") answer the unverified Complaint of Plaintiff Salvador Rosales ("Plaintiff") on behalf of himself, others similarly situated, and the general public as follows:

GENERAL DENIAL

Pursuant to Code of Civil Procedure section 431.30, Defendants deny generally and specifically, collectively and individually, each and every material allegation contained in the Complaint, and deny that Plaintiff, the putative class, and/or the alleged "aggrieved employees" have been injured or damaged in any sum, or at all, and further deny that Plaintiff, the putative class, and/or the alleged "aggrieved employees" are entitled to any damages or relief whatsoever.

AFFIRMATIVE AND OTHER DEFENSES

Defendants assert the following affirmative and other defenses, which apply to the claims of Plaintiff, and/or some or all of the putative class members, and/or alleged "aggrieved employees." By asserting these defenses, Defendants do not concede that they have the burden of proof as to any such defense. To the extent that any defenses or legal theories asserted herein may be interpreted as being inconsistent, such defenses or legal theories are hereby pleaded in the alternative. Defendants do not presently know all the facts concerning Plaintiff's conduct sufficient to state all defenses at this time. Defendants will seek leave of this Court to amend this Answer should they later discover facts demonstrating the existence of additional defenses. Subject to and without waiving the foregoing, and without waiving Plaintiff's burden to show otherwise, Defendants plead as follows:

FIRST AFFIRMATIVE DEFENSE

Failure to State a Claim

 The Complaint, and each and every cause of action alleged therein, fails, in whole or in part, to state facts sufficient to constitute a cause of action upon which relief may be granted.

¹ Defendant Benihana Inc. was wrongfully sued and was not Plaintiff's employer. Benihana Inc. had no employees in the State of California during the relevant period, and it did not employee Plaintiff. Rather, Plaintiff was an employee of Benihana National Corp. at all relevant times mentioned herein. Therefore, any use in this Answer of the collective term "Defendants" refers solely to the fact that Benihana, Inc. was named as a defendant in this action, and does not constitute an admission that it employed Plaintiff, any member of the putative class, and/or any allegedly aggrieved employee.

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SECOND AFFIRMATIVE DEFENSE

Statute of Limitations

2. The Complaint, and each and every cause of action alleged therein, is barred, in whole or in part, by the applicable statute(s) of limitations, including, but not limited to, Code of Civil Procedure sections 338(a), 340 and 343, Labor Code section 203, and California Business & Professions Code section 17208.

THIRD AFFIRMATIVE DEFENSE

Arbitration

3. The Complaint, and each and every cause of action alleged therein, is barred, in whole or in part, to the extent any valid and enforceable arbitration agreement exists.

FOURTH AFFIRMATIVE DEFENSE

Res Judicata and Collateral Estoppel

4. The Complaint, and each and every cause of action alleged therein, is barred by the doctrines of collateral estoppel and/or *res judicata* to the extent that Plaintiff, and/or some or all of the putative class members, and/or alleged "aggrieved employees" have litigated issues raised by the Complaint prior to adjudication of those issues in the instant action.

FIFTH AFFIRMATIVE DEFENSE

Prior Release

5. The Complaint, and each and every cause of action alleged therein, is barred to the extent that Plaintiff, and/or some or all of the putative class members, and/or alleged "aggrieved employees" have released Defendants from any liability as alleged in the Complaint.

SIXTH AFFIRMATIVE DEFENSE

Defendants Not the Employer

6. The Complaint, and each and every cause of action alleged therein, is barred, in whole or in part, because Plaintiff, and/or some or all of the putative class members, and/or alleged "aggrieved employees" were not employed by Defendants, and Benihana, Inc. has no employees.

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SEVENTH AFFIRMATIVE DEFENSE

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7. The Complaint, and each and every cause of action alleged therein, is barred, in whole or in part, by the doctrine of avoidable consequences because Plaintiff, and/or some or all of the putative class members, and/or alleged "aggrieved employees" could have taken reasonable steps to avoid or mitigate the damages claimed, such as by reporting any unpaid work time and/or unpaid wages and/or timely reporting any inability to take a rest break. Their failure bars and/or diminishes any recovery against Defendants.

EIGHTH AFFIRMATIVE DEFENSE

Secretive Work

8. The Complaint, and each and every cause of action alleged therein, is barred, in whole or in part, because the work of Plaintiff, and/or some or all of the putative class members, and/or alleged "aggrieved employees" was voluntary in nature and performed without Defendants' knowledge or authorization, they deliberately prevented Defendant Benihana National Corp. from acquiring knowledge of the hours worked, and/or Defendants were otherwise unaware of the hours they worked.

NINTH AFFIRMATIVE DEFENSE

No Hours Worked

9. The Complaint, and each and every cause of action alleged therein, is barred, in whole or in part, because the time alleged by Plaintiff, and/or some or all of the putative class members, and/or alleged "aggrieved employees" does not constitute "hours worked" within the meaning of state law.

TENTH AFFIRMATIVE DEFENSE

De Minimis

10. The Complaint, and each and every cause of action alleged therein, is barred, in whole or in part, because any work of Plaintiff, and/or some or all of the putative class members, and/or alleged "aggrieved employees" beyond their compensated workday or workweek was *de minimis*.

ELEVENTH AFFIRMATIVE DEFENSE

Accord and Satisfaction/Full Performance

11. The Complaint, and each and every cause of action alleged therein, fails because Plaintiff, and/or some or all of the putative class members, and/or alleged "aggrieved employees" have been fully paid all amounts legally owed by Defendants, and by accepting the payments made to them, they have effectuated an accord and satisfaction of their claims.

TWELFTH AFFIRMATIVE DEFENSE

No Private Right of Action

12. The Complaint, and each and every cause of action alleged therein, is barred as there is no private right of action for such claims.

THIRTEENTH AFFIRMATIVE DEFENSE

No Irreparable Harm

13. The Complaint, and each and every cause of action therein, is barred in whole or in part, as Plaintiff, and/or some or all of the putative class members, and/or alleged "aggrieved employees" have not suffered and will not suffer irreparable harm because of any of the alleged conduct of Defendants, and on that basis there is no entitlement to injunctive or other relief.

FOURTEENTH AFFIRMATIVE DEFENSE

No Standing for Injunctive Relief

14. Defendants allege that Plaintiff, as a former employee, lacks standing to pursue any claims for injunctive or declaratory relief on his behalf or on behalf of the Putative Class members.

FIFTEENTH AFFIRMATIVE DEFENSE

Laches, Estoppel, Unclean Hands, Consent, Waiver, Release, and/or Unjust Enrichment

15. The Complaint, and each and every cause of action therein, is barred in whole or in part by the doctrine(s) of laches, estoppel, unclean hands, consent, waiver, release, and/or unjust enrichment.

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SIXTEENTH AFFIRMATIVE DEFENSE

Liquidated Damages, Costs, or Attorneys' Fees

16. The Complaint, and each and every cause of action alleged therein, fails to state a claim for an award of liquidated damages, costs, or attorneys' fees under California Labor Code sections 218.5, 226, 1194, 1194.2(a), and 2698, *et seq.*, Code of Civil Procedure section 1021.5, California Business and Professions Code section 17200, *et seq.*, or any other basis.

SEVENTEENTH AFFIRMATIVE DEFENSE

Exhaustion

17. Plaintiff, the putative class members, and/or alleged "aggrieved employees" failed to properly exhaust all of the applicable contractual, administrative, and/or statutorily required remedies prior to filing this action, and that such failure bars this suit in whole or in part.

EIGHTEENTH AFFIRMATIVE DEFENSE

Damages or Loss Proximately Caused By Plaintiff and/or Putative Class Members

18. Defendants allege that any damage or loss sustained by Plaintiff, the putative class members, and/or alleged "aggrieved employees" was proximately caused by their own actions or inactions.

NINETEENTH AFFIRMATIVE DEFENSE

Double Recovery

19. Defendants allege that, to the extent multiple penalties are sought for the same alleged violations, such claims are barred by the prohibition on double recovery and would violate Defendants' due process rights under the Fourteenth Amendment of the United States Constitution and under the Constitution and laws of the State of California.

TWENTIETH AFFIRMATIVE DEFENSE

Excessive Fines

20. Defendants allege that any claims of Plaintiff, the putative class members, and/or alleged "aggrieved employees" seeking penalties or exemplary damages are barred, in whole or in part, because the imposition of such damages in this case would violate the due process and excessive fines clauses in violation of the Eighth and Fourteenth Amendments of the United States Constitution

and Article 1, sections 7 and 8 of the California Constitution, including the prohibition against 1 excessive fines and punishment. See Timbs v. Indiana, 139 S.Ct. 682, 2019 WL 691578 (U.S. Feb. 20, 2 3 2019) (Excessive Fines Clause of the Eighth Amendment prohibits the government from imposing "excessive fines" as punishment); United States v. Mackby, 261 F.3d 821, 830 (9th Cir. 2001) (civil 4 5 sanctions under False Claims Act should be analyzed under "the Excessive Fines Clause because the sanctions represent a payment to the government, at least in part, as punishment."); City & Cty. of San 6 7 Francisco v. Sainez, 77 Cal. App. 4th 1302, 1321 (2000) (applying the prohibition of excessive fines to penalties imposed under California's Building Code: "The law is settled that a civil penalty such as 8 9 the one here, by virtue of its partially punitive purpose, is a fine for purposes of the constitutional protection.") 10 11 12 13 14

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TWENTY-FIRST AFFIRMATIVE DEFENSE

Abstention

21. Defendants allege that the Complaint cannot be maintained against them to the extent Plaintiff, the putative class members, and/or alleged "aggrieved employees" secreted or absented themselves to avoid payment of wages, thereby relieving Defendants of any liability for penalties predicated on Labor Code sections 203 and/or 210.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Breach of Duties

22. Defendants are informed and believe that a reasonable opportunity for investigation and discovery will reveal, and on that basis allege, that the Complaint, and each purported cause of action therein, are barred by breaches of duties that Plaintiff, the putative class members, and/or alleged "aggrieved employees" owed to Defendant Benihana National Corp. under Labor Code sections 2853, 2854, 2856, 2857, 2858 and 2859.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Substantial Compliance

23. Defendants allege that even assuming arguendo, Defendants failed to comply with any provision of the Labor Code, Defendants' substantial compliance renders an award of civil penalties inappropriate under the circumstances, including civil penalties pursuant to the Wage Order and Labor

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Code. For the same reason, should the Court find that a violation of the Labor Code occurred, and such violation gives rise to potential penalties, the Court must exercise its discretion and significantly discount or eliminate any potential penalties owed by Defendants due to their good faith efforts to comply with the Labor Code and/or substantial compliance with the Labor Code.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Reasonable Belief of Compliance with Law

24. Defendants allege that any violation of the Labor Code or an Order of the Industrial Welfare Commission was an act or omission made in good faith and Defendants had reasonable grounds for believing that policies and practices complied with applicable laws and that any such act or omission was not a violation of the Labor Code or any Order of the Industrial Welfare Commission such that there is no entitlement to any damages.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Rest Breaks - Failure to Follow Instruction

25. Civil penalties pursuant to Labor Code section 558 predicated on Labor Code sections 226.7 and 512 are inappropriate because, to the extent, if any, that Plaintiff, and/or some or all of the putative class members, and/or alleged "aggrieved employees" did not take meal periods or rest breaks, it was the result of their failure to follow Defendants' reasonable instructions.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Rest Breaks - Provided

26. Any rest period claims fail, in whole or in part, because Plaintiff, the putative class members, and/or alleged "aggrieved employees" were provided with and/or authorized and permitted to take all legally required rest breaks.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Rest Breaks – Voluntarily Skipped

27. Any rest period claims fail, in whole or in part, because Plaintiff, the putative class members, and/or alleged "aggrieved employees" voluntarily skipped, shortened, or waived rest breaks.

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TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Cal. Lab. Code § 1197 - Minimum Wages - Compliance

28. The claims of Plaintiff, the putative class members, and/or the alleged "aggrieved employees" for unpaid minimum wages are barred, either in whole or in part, because Defendants at all times paid them at minimum wage or above.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Cal. Lab. Code § 510 – Overtime Wages – Compliance

29. The claims of Plaintiff, the putative class members, and/or the alleged "aggrieved employees" for unpaid overtime are barred, in whole or in part, because Defendants paid them overtime in compliance with California law.

THIRTIETH AFFIRMATIVE DEFENSE

Waiting Time Penalties - Good Faith Dispute

30. Any claims for penalties pursuant to Labor Code section 203 are barred, in whole or in part, because a good faith dispute exists over whether any wages are owed to Plaintiff, the putative class members, and/or alleged "aggrieved employees."

THIRTY-FIRST AFFIRMATIVE DEFENSE

Waiting Time Penalties - Not Willful

31. Any claims for penalties pursuant to Labor Code section 203 are barred, in whole or in part, because any failure to pay waiting time penalties was not intentional or willful.

THIRTY-SECOND AFFIRMATIVE DEFENSE

Waiting Time Penalties - Not Wages

32. Any claims for penalties pursuant to Labor Code section 203 are barred, in whole or in part, because the compensation/premiums sought do not constitute wages.

THIRTY-THIRD AFFIRMATIVE DEFENSE

Waiting Time Penalties – No Penalties After Action Filed

33. Any claims for penalties pursuant to Labor Code section 203 are barred, in whole or in part, by the statute of limitations, as any claim stopped accruing upon the filing of the Complaint.

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THIRTY-FOURTH AFFIRMATIVE DEFENSE

Wage Statements – Not Knowing and Intentional

34. Any claims for penalties pursuant to Labor Code section 226 are barred, in whole or in part, because Plaintiff, the putative class members, and/or alleged "aggrieved employees" were not "injured" thereby and/or because Defendants' alleged failure to comply with California Labor Code section 226(a) was not a "knowing and intentional failure" under California Labor Code § 226(e).

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Wage Statements – Good Faith Belief

35. Defendants acted with a reasonable and good faith belief that they complied with their obligations, if any, under the California Labor Code, specifically including sections 226, 226.3, and 226.7 thereof, as to Plaintiff, the putative class members, and/or alleged "aggrieved employees."

THIRTY-SIXTH AFFIRMATIVE DEFENSE

Wage Statements – Substantial Compliance

36. Any claims for penalties pursuant to Labor Code section 226 are barred, in whole or in part, because Defendants substantially complied with all applicable laws, statutes, regulations, and applicable Wage Orders.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

Wage Statements – Lack of Injury

37. Plaintiff, the putative class members, and/or alleged "aggrieved employees" sustained no injury from any alleged failure by Defendants to comply with Labor Code section 226.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

Timing of Wage Payments

38. Any claims for penalties, including, but not limited to penalties predicated on Labor Code sections 201-204, are barred, in whole or in part, because (1) there are bona fide disputes as to whether Defendants failed to timely pay all wages due, (2) Defendants have not willfully failed to pay such compensation, if any is owed, and/or (3) to impose penalties in this case would be inequitable and unjust.

THIRTY-NINTH AFFIRMATIVE DEFENSE

No Representative and/or Class Action

39. The Complaint, and each and every cause of action set forth therein as a representative or class action, fails because: (a) common issues of fact or law do not predominate, rather, to the contrary, individual issues predominate; (b) Plaintiff's claims are not representative or typical of the claims of the putative class members; (c) Plaintiff and the putative class counsel are not adequate representatives for the putative class; and/or (d) a well-defined community of interest in the questions of law and/or fact affecting Plaintiff and the putative class members does not exist.

FORTIETH AFFIRMATIVE DEFENSE

Class and PAGA Action - Lack of Standing

40. The Complaint cannot proceed as a class action or representative action on any of the causes of action alleged, including under California Business and Professions Code section 17200, *et seq.* or under the Private Attorneys General Act ("PAGA") under California Labor Code § 2698, *et seq.*, because Plaintiff and some or all of the Putative Class or alleged "aggrieved employees" lack standing to bring this action.

FORTY-FIRST AFFIRMATIVE DEFENSE

Class and PAGA Action - Lack of Manageability

41. The Complaint, and each and every cause of action alleged therein, or some of them, cannot proceed as a class or PAGA action because of difficulties likely to be encountered that render the action unmanageable.

FORTY-SECOND AFFIRMATIVE DEFENSE

Class and PAGA Action – Violation of Duc Process

42. Certification of a class or PAGA action, as applied to the facts and circumstances of this case, would constitute a denial of Defendants' due process rights, both substantive and procedural, in violation of the Fourteenth Amendment to the United States Constitution and the California Constitution.

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FORTY-THIRD AFFIRMATIVE DEFENSE

Class Action - Class Definition

43. The proposed class definitions in the Complaint are vague and overly broad, and otherwise fail to satisfy the requirements for maintaining a class action.

FORTY-FOURTH AFFIRMATIVE DEFENSE

Class Action - No Damages

44. This case cannot be tried on a representative basis or with the use of statistical sampling consistent with due process because the use of representative evidence or statistical sampling would result in damages being awarded to those who have suffered no injury and have no legal right to damages.

FORTY-FIFTH AFFIRMATIVE DEFENSE

PAGA - No Unpaid Wages

45. Any claims based on the Private Attorneys General Act are barred to the extent Plaintiff seeks to recover penalties pursuant to California Labor Code sections 226 and/or 558, as such penalties may only be imposed in a proceeding brought by the California Labor Commissioner.

FORTY-SIXTH AFFIRMATIVE DEFENSE

PAGA – Inadequate Representative

46. Any claims based on the Private Attorneys General Act are barred because Plaintiff is not an adequate and proper representative of any group or putative class of alleged "aggrieved employees."

FORTY-SEVENTH AFFIRMATIVE DEFENSE

PAGA – Insufficient Notice

47. Plaintiff failed to provide the California Labor & Workforce Development Agency ("LWDA") sufficient notice of the claims, the names of the alleged "aggrieved employees" on whose behalf Plaintiff intends to seek penalties, and/or the facts underlying their claims to permit the LWDA to make a reasoned determination regarding whether to investigate; thus, Plaintiff's notice was deficient and the Court lacks jurisdiction over claims for violation of the Private Attorneys General Act.

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FORTY-EIGHTH AFFIRMATIVE DEFENSE

PAGA - Failure to Timely Exhaust

48. Plaintiff's claim for civil penalties is barred, in whole or in part, to the extent Plaintiff failed to timely exhaust the notice and other administrative requirements set out in the Private Attorneys General Act, Labor Code section 2589, *et seq*.

FORTY-NINTH AFFIRMATIVE DEFENSE

PAGA - Failure to Exhaust for Future Violations

49. Any claims made by Plaintiff or alleged "aggrieved employees" for penalties occurring after the date of the "written notice" provided to the LWDA pursuant to Labor Code § 2699.3 are barred because Plaintiff failed to exhaust the mandatory exhaustion requirements under the Private Attorneys General Act for those future violations, if any.

FIFTIETH AFFIRMATIVE DEFENSE

PAGA - LWDA Retains Authority

50. Any claims made by Plaintiff or alleged "aggrieved employees" for penalties occurring after the date of the "written notice" provided to the LWDA pursuant to Labor Code § 2699.3 are barred because the LWDA, and its departments, divisions, commissions, boards, agencies, or employees retain the primary and exclusive authority to investigate and cite a "person" (as defined by the PAGA) for future violations not disclosed in the administrative exhaustion required by the PAGA.

FIFTY-FIRST AFFIRMATIVE DEFENSE

PAGA - Penalties Barred

51. Any claims made by Plaintiff or alleged "aggrieved employees" for penalties occurring after the date of the "written notice" provided to the LWDA pursuant to Labor Code section 2699.3 are barred because under Labor Code section 2699(e)(1), the Court has the discretion of the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees in assessing a civil penalty, which includes the discretionary authority not to pursue claims or penalties against a "person" (as defined by the PAGA) and an award of penalties for future violations would be unwarranted and unjust to the extent the Court determines that the language of PAGA regarding civil penalties recoverable by Plaintiff is ambiguous (which Defendant denies).

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FIFTY-SECOND AFFIRMATIVE DEFENSE

PAGA - Qui Tam Action

52. Any claims made by Plaintiff or alleged "aggrieved employees" for penalties occurring after the date of the "written notice" provided to the LWDA pursuant to Labor Code section 2699.3 are barred because a representative PAGA action, to the extent it is a *qui tam* action, lacks governmental oversight of the action that is provided in other types of *qui tam* actions, which justifies the recovery for future violations.

FIFTY-THIRD AFFIRMATIVE DEFENSE

PAGA - First to File

53. Any claims made by Plaintiff or alleged "aggrieved employees" for penalties occurring after the date of the "written notice" provided to the LWDA pursuant to Labor Code § 2699.3 are barred because a representative PAGA action, to the extent it is a *qui tam* action, lacks a first-to-file rule that is provided in other types of *qui tam* actions, which justifies the recovery for future violations.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

PAGA – Earlier Filed Action

54. Defendants allege that Plaintiff's Complaint and his claim for PAGA penalties must be abated or stayed because Plaintiff asserts the same claims based on the same predicate violations arising from the same alleged relationship in an earlier filed PAGA action against Defendants.

FIFTY-FIFTH AFFIRMATIVE DEFENSE

PAGA – Double Recovery of Penalties

55. Plaintiff and the alleged "aggrieved employees" are not entitled to recover civil penalties under PAGA, to the extent that such penalties are sought in addition to other civil penalties for the same claims, as such double recovery is prohibited and would constitute unjust enrichment.

FIFTY-SIXTH AFFIRMATIVE DEFENSE

PAGA – Separation of Powers (Judicial Branch)

56. Any claims based on the Private Attorneys General Act are barred, in whole or in part, because the prosecution of this matter as a representative action under the PAGA, and/or an award of penalties pursuant to the PAGA, would violate the constitutionally based separation of powers doctrine

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not pursue such claims.

FIFTY-SEVENTH AFFIRMATIVE DEFENSE

PAGA – Separation of Powers (Executive Branch)

by impermissibly usurping the authority to regulate lawyers assigned to the judicial branch of

government, including the power to promulgate the rules by which lawyers/prosecutors may or may

57. Any claims based on the Private Attorneys General Act are barred, in whole or in part, because the prosecution of this matter as a representative action under PAGA, and/or an award of penalties pursuant to the PAGA, would violate the constitutionally based separation of powers doctrine by impermissibly usurping prosecutorial authority assigned to the executive branch of government and impermissibly delegated by the PAGA to private attorneys without essential safeguards, including continuing oversight or control by the executive branch.

FIFTY-EIGHTH AFFIRMATIVE DEFENSE

PAGA – Equal Protection

58. Any claims based on the Private Attorneys General Act are barred, in whole or in part, because the prosecution of this matter as a representative action under PAGA, and/or an award of penalties pursuant to the PAGA, would violate the Equal Protection Clause of the United States and California Constitutions, as it arbitrarily and unjustly exempts certain employers to the exclusion of others. *See* Labor Code § 2699.6.

FIFTY-NINTH AFFIRMATIVE DEFENSE

PAGA - No Aggrieved Employees

59. Any claims based on the Private Attorneys General Act are barred, in whole or in part, because there are no "aggrieved employees."

SIXTIETH AFFIRMATIVE DEFENSE

PAGA - Violations Cured

60. Any claims based on the Private Attorneys General Act are barred, in whole or in part, because Defendants timely cured any alleged violations.

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SIXTY-FIRST AFFIRMATIVE DEFENSE

PAGA - No Jury Trial

Neither Plaintiff nor any alleged "aggrieved employees" are entitled to a jury trial 61. because a claim under the PAGA is an action solely seeking PAGA penalties, which sound in equity and thus may only be tried to a court.

SIXTY-SECOND AFFIRMATIVE DEFENSE

Additional Defenses

62. Defendants hereby reserve the right to assert any affirmative or additional defenses they discover during the course of this litigation and prays that the Court afford them leave to amend their Answer and upon a timely motion requesting the ability to do the same.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray:

- 1. That Plaintiff's Complaint be dismissed in its entirety with prejudice;
- 2. That a class or subclass not be certified;
- 3. That Plaintiff, the putative class members, and/or the alleged "aggrieved employees" take nothing by way of this action;
 - 4. That judgment be entered in Defendants' favor;
- 5. That Defendants be awarded their costs of suit and attorneys' fees incurred herein; and
- 6. That Defendants be awarded such other and further relief as the Court deems just and proper.

DATED: June 11, 2020

CHAD D. GREESON LITTLER MENDELSON, P.C.

Attorneys for Defendants BENIHANA NATIONAL CORP. and BENIHANA INC.

4823-4558-8671.1 062447.1153

PROOF OF SERVICE 1 2 I, the undersigned, state: 3 I am employed in the City and County of Contra Costa, State of California. I am over the age of 18 years, and not a party to the within action. My business address is LITTLER 4 MENDELSON, P.C., 1255 Treat Boulevard, Ste. 600, Walnut Creek, CA 94597. 5 On June 11, 2020, I served the foregoing document(s) described as: 6 ANSWER OF DEFENDANTS BENIHANA NATIONAL CORP. AND BENIHANA INC. TO PLAINTIFF'S UNVERIFIED COMPLAINT 7 on the interested parties by enclosing a true copy in a sealed envelope addressed as follows: 8 Attorneys for Plaintiff, SALVADOR ROSALES Arlo Garcia Uriarte, Esq. 9 Un Kei Wu, Esq. LIBERATION LAW GROUP P.C. Telephone: (415) 695-1000 10 2760 Mission Street Email: arlo@liberationlawgroup.com San Francisco, CA 94110 unkei@liberationlawgroup.com 11 12 **VIA OVERNIGHT DELIVERY**: I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at 13 the address(es) listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight 14 delivery carrier. VIA U.S. MAIL: I enclosed the document(s) in a sealed envelope or package 15 addressed to the person(s) at the address(es) listed above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I 16 am readily familiar with Littler Mendelson, P.C.'s practice for collecting and processing correspondence for mailing. On the same day that correspondence is 17 placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully 18 prepaid. 19 VIA FAX TRANSMISSION: Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax 20 numbers listed above. No error was reported by the fax machine that I used. **VIA ELECTRONIC MAIL:** Based on a court order or an agreement of the × 21 parties to accept electronic service, I caused the document(s) to be sent to the persons at the electronic service addresses listed as follows: 22 Email: 23 arlo@liberationlawgroup.com unkei@liberationlawgroup.com 24 25 26 27 28

LITTLER MENDELSON, P.C 333 BUSH STREET 34TH FLOOR SAN FRANCISCO, CA 94104 415.433.1940

1 2	VIA MESSENGER SERVICE: I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and providing them to a professional messenger service for service.	
	DECLARATION OF MESSENGER : I personally delivered the envelope or	
3	package received from the declarant above to the persons at the addresses listed above. For a party represented by an attorney, delivery was made to the attorney	
4	or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist	
5	or an individual in charge of the office, between the hours of nine in the morning and five in the evening; for a party, delivery was made to the party or by leaving	
6 7	the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening. At the	
8	time of service, I was over 18 years of age. I am not a party to the above- referenced legal proceeding. I served the envelope or package, as stated above on	
9	June 11, 2020. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.	
	Dated:	
10	Signature of Declarant/Messenger	
11	I declare under penalty of perjury under the laws of the State of California that the	
12	foregoing is true and correct.	
13	Executed on June 11, 2020, at Walnut Creek, California.	
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16	CHAD D. GREESON	
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LITTLER MENDELSON, P.C. 333 BUSH STREET 34TH FLOOR SAN FRANCISCO, CA 94104 415.433.1940

Exhibit D

1 2	CONSTANCE E. NORTON, Bar No. 14636. LITTLER MENDELSON, P.C. 333 Bush Street, 34th Floor San Francisco, CA 94104	5
3 4	Telephone: (415) 433-1940 Facsimile: (415) 399-8490 Email: cnorton@littler.com	
5	CHAD D. GREESON, Bar No. 251928 LITTLER MENDELSON, P.C. Treat Towers, Suite 600	
7 8 9	1255 Treat Boulevard Walnut Creek, CA 94597 Telephone: (925) 932-2468 Facsimile: (925) 946-9809 Email: cgreeson@littler.com	
10	Attorneys for Defendants BENIHANA NATIONAL CORP. and BENIHANA INC.	
12	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
13	COUNTY OF SAN FRANCISCO	
14		
15 16	SALVADOR ROSALES, on behalf of himself, on behalf of others similarly situated and the general public,	CASE NO. CGC-20-582696
17 18	Plaintiff, vs.	NOTICE TO STATE COURT AND ADVERSE PARTIES OF FILING NOTICE OF REMOVAL
19	BENIHANA NATIONAL CORP., BENIHANA, INC. and DOES 1 through 10, inclusive,	ASSIGNED FOR ALL PURPOSES TO JUDGE GARRETT L. WONG, DEPT. 610
21	Defendants.	Trial Date: TBD Complaint Filed: February 4, 2020
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LITTLER MENDELSON, P.C.
333 Bush Street
34th Floor
San Francisco, CA 94104
415.433.1940

TO THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO, PLAINTIFF SALVADOR ROSALES AND HIS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendants Benihana National Corp. and Benihana Inc. have filed a Notice of Removal in the United States District Court for the Northern District of California. The basis for original jurisdiction of the federal court is grounded in the Class Action Fairness Act and pursuant to 28 U.S.C. sections 1332(d) and 1441(a). A copy of the Notice of Removal is attached hereto as Exhibit 1.

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. section 1446, the filing of the Notice of Removal with the United States District Court, together with the filing of this Notice, effects the removal of this action to federal court and this Court shall proceed no further in this matter, unless and until the federal court remands this matter.

DATED: June 12, 2020

CONSTANCE E. NORTON CHAD D. GREESON LITTLER MENDELSON, P.C.

Attorneys for Defendants BENIHANA NATIONAL CORP. and BENIHANA INC.

4812-4065-3503.1 062447.1153

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PROOF OF SERVICE 1 2 I, the undersigned, state: 3 I am employed in the City and County of Contra Costa, State of California. I am over the age of 18 years, and not a party to the within action. My business address is LITTLER 4 MENDELSON, P.C., 1255 Treat Boulevard, Ste. 600, Walnut Creek, CA 94597. 5 On June 12, 2020, I served the foregoing document(s) described as: 6 NOTICE TO STATE COURT AND ADVERSE PARTIES OF FILING NOTICE OF REMOVAL 7 on the interested parties by enclosing a true copy in a sealed envelope addressed as follows: 8 Attorneys for Plaintiff, SALVADOR ROSALES Arlo Garcia Uriarte, Esq. 9 Un Kei Wu, Esq. LIBERATION LAW GROUP P.C. Telephone: (415) 695-1000 10 2760 Mission Street Email: arlo@liberationlawgroup.com San Francisco, CA 94110 unkei@liberationlawgroup.com 11 12 **VIA OVERNIGHT DELIVERY**: I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) at 13 the address(es) listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight 14 delivery carrier. VIA U.S. MAIL: I enclosed the document(s) in a sealed envelope or package 15 addressed to the person(s) at the address(es) listed above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I 16 am readily familiar with Littler Mendelson, P.C.'s practice for collecting and processing correspondence for mailing. On the same day that correspondence is 17 placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully 18 prepaid. 19 VIA FAX TRANSMISSION: Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax 20 numbers listed above. No error was reported by the fax machine that I used. **VIA ELECTRONIC MAIL:** Based on a court order or an agreement of the 21 × parties to accept electronic service, I caused the document(s) to be sent to the persons at the electronic service addresses listed as follows: 22 Email: 23 arlo@liberationlawgroup.com unkei@liberationlawgroup.com 24 25 26 27 28

LITTLER MENDELSON, P.C. 333 BUSH STREET 34TH FLOOR SAN FRANCISCO, CA 94104 415.433.1940 CASE NO. CGC-20-582696

1	VIA MESSENGER SERVICE: I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed above and					
2	providing them to a professional messenger service for service. DECLARATION OF MESSENCER: I personally delivered the envelope or					
3	DECLARATION OF MESSENGER : I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed above. For a party represented by an attorney, delivery was made to the attorney					
4	or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist					
5	or an individual in charge of the office, between the hours of nine in the morning and five in the evening; for a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening. At the					
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7	time of service, I was over 18 years of age. I am not a party to the above- referenced legal proceeding. I served the envelope or package, as stated above on					
8 9	June 12, 2020. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.					
	Dated:					
10	Signature of Declarant/Messenger					
11	I declare under penalty of perjury under the laws of the State of California that the					
12	foregoing is true and correct.					
13	Executed on June 12, 2020, at Walnut Creek, California.					
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15	Monica A. Martinez					
16	MONICA A. MARTINEZ 4826-6465-1968.1 062447.1153					
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